

No. . . . . 4056

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IN THE 7  
**United States Circuit Court of Appeals**  
**For the Ninth Circuit**

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RUTH HAZELTON,

*Plaintiff in Error,*

vs.

UNITED STATES OF AMERICA,

*Defendant in Error.*

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**Transcript of the Record**

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*Upon Writ of Error from the United States District  
Court for the District of Idaho,  
Central Division.*

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*Upon Writ of Error from the United States District  
Court for the District of Idaho,  
Central Division.*

NAMES AND ADDRESSES OF ATTORNEYS  
OF RECORD:

---

MILES S. JOHNSON,  
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E. G. DAVIS,  
United States Attorney,

JOHN H. McEVERS,  
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*In the District Court of the United States, in and for  
the District of Idaho, Central Division.*

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UNITED STATES OF AMERICA,

*Plaintiff,*

vs.

RUTH HAZELTON,

*Defendant.*

---

No. 1816.

AFFIDAVIT.

United States of America, )  
District of Idaho, ) ss.  
Central Division. )

C. B. Steunenberg, being first duly sworn on his oath, deposes and says: That he is a Federal Prohibition Agent for the District of Idaho, and as such Prohibition Agent makes this affidavit; that on or about the 6th day of November, A. D. 1922, at Lewiston, Nez Perce County, Idaho, Ruth Hazelton, did, then and there wilfully, knowingly and unlawfully, sell a quantity of intoxicating liquor containing more than one-half of one per cent of alcohol, to-wit, one pint of a certain spirituous liquor commonly known as "moonshine whiskey", the same being designed, intended and fit for use as a beverage.

C. B. STEUNENBERG,

Subscribed and sworn to before me this 20th day of December, A. D., 1922.

(SEAL)

W. D. McREYNOLDS,

*Clerk of the U. S. District Court.*

By Pearl E. Zanger,

*Deputy.*

Endorsed, Filed Dec. 27, 1922.

W. D. McREYNOLDS, Clerk,

By Pearl E. Zanger, Deputy.

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(Title of Court and Cause.)

Information.

No. 1816.

E. G. DAVIS, United States Attorney for the District of Idaho, who for the United States in this behalf prosecutes in his own proper person comes into Court on this 27th day of December, 1922, and with leave of the Court first had and obtained upon his official oath gives the Court here to understand and to be informed as follows:

COUNT ONE

(Possession)

That Ruth Hazelton, late of the County of Nez Perce, State of Idaho, heretfore, to-wit: on or about the 6th day of November, 1922, at Lewiston, Idaho, in the said County of Nez Perce, in the Central Division of the District of Idaho and within the jurisdiction of this Court, did then and there wilfully, knowingly and unlawfully have in her possession certain intoxicating liquor containing more than one-half of one per cent of alcohol, to-wit, one pint of a certain spirituous liquor commonly known as "moonshine whiskey", the same being designed, intended and fit for use as a beverage, the possession of same being then and there prohibited and unlawful and contrary to the form of the statute in



such cases made and provided, and against the peace and dignity of the United States of America.

COUNT TWO

(Sale)

That Ruth Hazelton, late of the County of Nez Perce, State of Idaho, heretofore, to-wit: on or about the 6th day of November, 1922, at Lewiston, Idaho, in the said County of Nez Perce, in the Central Division of the District of Idaho and within the jurisdiction of this Court, did then and there wilfully, knowingly and unlawfully, sell a quantity of intoxicating liquor containing more than one-half of one per cent of alcohol, to-wit, one pint of a certain spirituous liquor, commonly known as "moonshine whiskey", the same being designed, intended and fit for use as a beverage, the sale of same being then and there prohibited and unlawful and contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

COUNT THREE

(Nuisance)

That Ruth Hazelton, late of the County of Nez Perce, State of Idaho, heretofore, to-wit: between June 1, 1922, and December 1, 1922, at Lewiston, Idaho, in the said County of Nez Perce, in the Central Division of the District of Idaho and within the jurisdiction of this Court, did then and there, wilfully, knowingly and unlawfully, maintain, keep

and operate the Central Hotel located on Lot 3 of Block 30 in the said city of Lewiston, Nez Perce County, Idaho, as a public and a common nuisance, as a place wherein intoxicating liquors containing more than one-half of one per cent of alcohol, to-wit, certain spirituous liquors, commonly known as "moonshine whiskey", the same being designed, intended and fit for use as a beverage, were sold, kept and bartered, said acts and things herein charged being then and there prohibited and unlawful; and contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

E. G. DAVIS,  
*United States Attorney for  
the District of Idaho.*

Upon the affidavit of C. B. Steunenbergh, presented herewith, leave is hereby granted to file the foregoing Information.

Let process issue and a bond be fixed in the sum of \$500.

FRANK S. DIETRICH,  
*District Judge.*

Endorsed, Filed Dec. 27, 1922.

W. D. McREYNOLDS, Clerk.

By Pearl E. Zanger, Deputy.

(Title of Court and Cause.)

No. 1816.

BILL OF EXCEPTIONS.

BE IT REMEMBERED, this cause came on to be heard before Hon. Frank S. Dietrich, District Judge presiding, in the above entitled court, whereupon the following proceedings were had:

*In the District Court of the United States for the District of Idaho, Central Division.*

UNITED STATES OF AMERICA,

*Plaintiff,*

vs.

RUTH HAZELTON,

*Defendant.*

---

J. H. McEvers, Esq., Assistant U. S. Attorney, and McKeen F. Morrow, Esq., Assistant U. S. Attorney,

*For Plaintiff.*

Miles S. Johnson, Esq., and T. B. West, Esq.,

*For Defendant.*

---

This cause came on for trial at 9:30 A. M., Tuesday, May 22, 1923, before Hon. Frank S. Dietrich, Judge of the above-entitled court, whereupon a jury was selected and sworn, and the following proceedings were then had:

MR. McEVERS: If the Court please, and gentlemen of the jury, the defendant in this case, Ruth

Hazelton, is charged in the first count with the unlawful possession of intoxicating liquor, to-wit, one pint of moonshine whiskey, on or about the 6th day of November, 1922, at Lewiston, Idaho. And in the second count it is charged that at the same time and place she sold that one pint of moonshine whiskey.

In the third count it is charged that between June 1st, 1922, and December 1, 1922, she maintained, kept, and operated the Central Hotel, located on Lot 3 of Block 30, in the City of Lewiston, Nez Perce County, Idaho, as a public and common nuisance, that is, as a place where moonshine whiskey was kept, sold, and bartered, and other intoxicating liquor, contrary to law, to which information the defendant has entered her plea of not guilty.

I will call Mr. Marler.

MR. JOHNSON: For the purpose of making the record, if Your Honor please: Counsel in reading the information stated that she was charged with having one pint of liquor, in the first count, and in the second count charged with having sold the same pint. Therefore we make a motion to require the Government to elect.

THE COURT: The motion is denied.

FRANK M. MARLER, produced as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By MR. McEVERS:

Q. Will you state your name?

A. Frank M. Marler.

Q. Where do you live?

A. Lewiston, Idaho.

Q. What is your business?

A. Federal Prohibition Agent.

Q. How long have you occupied that position?

A. About a year and a half.

Q. Were you down in Lewiston last year?

A. I was, yes.

Q. I will ask you whether or not you, on or about the 6th of November, 1922, saw the defendant, Ruth Hazelton?

A. I did.

Q. And where?

A. At the Central Hotel, Lewiston.

Q. Just relate the circumstances under which you saw her.

A. On the 6th day of November I went to the Central Hotel for the purpose of purchasing a pint of liquor. I had been there previous and purchased from another lady there, and when I went there this time Mrs. Hazelton was there. The other lady introduced me as one of the customers and told Mrs. Hazelton I wanted to get a pint of liquor. Mrs. Hazelton left the room and went into another room, and presently returned and handed to me the bottle. I gave her a five dollar bill, and she went to

the other lady and got change, and returned to me for the change. I put the bottle in my pocket, and talked a little while, and left.

Q. Handing you Government's Exhibit 1, this bottle, I will ask you whether or not you have seen that before?

A. I have.

Q. And where did you first see that?

A. I first saw this bottle at the Central Hotel.

Q. And when?

A. November 6, 1922.

Q. Is that the bottle that you say you purchased from Ruth Hazelton?

A. It is.

Q. Did you make an examination of the contents of that bottle at the time you purchased it?

A. I did.

Q. What examination did you make?

A. By tasting and smelling it.

Q. I will ask you whether or not at that time you had ever had any experience in tasting and smelling of the beverage ordinarily known as moonshine whiskey?

A. I had.

Q. Had that been very often?

A. Yes.

Q. Were you able to tell it when you tasted it or smelled it?

A. I was and am.

Q. What was this at the time you got it?

A. Moonshine whiskey, I would say.

Q. Do you know whether or not that is intoxicating?

A. It is.

Q. And is it ordinarily used as a beverage?

A. It is, yes.

Q. What did you do with that after you got it?

A. Placed it in my pocket and took it up to my house and labeled it.

Q. Then what did you do with it?

A. Locked it in my trunk for a while, and later brought it to Moscow and locked it here in the marshal's office.

Q. In the vault up there?

A. Yes, sir.

Q. I will ask you whether or not the contents of it is the same as when you received it from Ruth Hazelton?

A. It is.

Q. Did you get that out of the vault this morning.

A. I did.

MR. McEVERS: I offer in evidence at this time Government's Exhibit 1, consisting of this pint of moonshine whiskey.

MR. JOHNSON: I would like to ask the witness a few questions.

By MR. JOHNSON:

Q. When did you place this label?

A. On the day that I purchased it.

Q. Who was this "Babe Jane Doe"? Was that put on there at the same time?

A. It was, yes.

MR. McEVERS: It is admitted, then, if the Court please?

THE COURT: Yes.

Q. (By MR. McEVERS): What do you mean by "Babe Jane Doe"?

A. That was the other lady that was there at the time. I don't know her name, didn't know her name or the defendant's name at that time, the exact name.

Q. Did you find out afterwards the name of this "Babe Jane Doe"?

A. Yes.

Q. What was it?

A. The name, I understand, is Joyce Black.

Q. Do you know who was operating the place, or did you have any conversation with the defendant as to who was operating the place there at the time you were up there?

A. At that time a statement was made to me that she had just returned from a vacation and was taking the place back that day, just got back and was taking charge.

Q. She had said that?

A. Yes.

MR. McEVERS: You may inquire.



CROSS EXAMINATION.

By MR. JOHNSON:

Q. When did you go to the Central Hotel first?  
When were you first up to the Central Hotel?

A. I don't exactly recall the exact date, some time in October.

Q. And you say this "Babe" is known as Joyce Black?

A. I have learned later, yes.

Q. You had purchased liquor from her?

A. I had.

Q. Mrs. Hazelton was not there at that time?

A. Not at the first purchase, no, sir.

Q. And when was the first time you ever saw Mrs. Hazelton?

A. November 6th.

Q. At this time related in identifying the bottle?

A. Yes.

Q. Now, when did you next see Mrs. Hazelton?

A. Why, I don't recall. I have seen her on the street once in a while, I think, after that.

Q. Now, prior to the time you were up there you were not conscious of ever having seen Mrs. Hazelton before?

A. Prior to the 6th?

Q. Prior to the 6th.

A. No.

Q. You asked this Babe Joyce or Joyce Black for a pint of liquor, did you?

A. I did.

Q. Had you bought any liquor of her in bottles before?

A. No, I hadn't.

Q. How did you get it from her before ?

A. By the drink.

Q. What was the purpose in going up there the last time?

A. To secure a bottle.

Q. As an exhibit?

A. Yes.

Q. And you asked Babe Black for liquor?

A. I did.

Q. And you say you gave five dollars, that is, you produced a five dollar bill?

A. Not at the time I asked for it, no.

Q. Well, when the liquor was brought to you?

A. Yes.

Q. Now who gave you the dollar and a half change?

A. Mrs. Hazelton.

Q. Are you sure of that?

A. I am.

Q. You remember of testifying, do you not, before the United States Commissioner at Lewiston, at the time of the preliminary hearing?

A. I do.

Q. Do you recall stating or testifying that she took the bill to Miss Black, and Miss Black gave her the dollar and a half. I don't exactly recall

which gave me the dollar and a half. I will ask you if you didn't so testify at the preliminary examination?

A. I didn't exactly recall at that moment.

Q. Didn't you so testify at that time?

A. Yes, I did.

Q. Now this bottle that you brought here was brought up here by you in the case of the Government against Joyce Black, was it not?

A. Well, I brought it up long before the case was—before that case was supposed to come up.

Q. I understand, but you came up here after getting that bottle, and swore to a complaint charging Joyce Black with having made the sale to you, did you not?

MR. McEVERS: I object to it on the ground that it is immaterial. They might both of them be guilty.

THE COURT: Yes. I don't think this would be the best evidence, Mr. Johnson. If there was any complaint made it ought to be produced. I don't know that it is material. It might be remotely so.

MR. JOHNSON: Have you got a copy of the complaint—

MR. McEVERS: Against Black?

THE COURT: If there was any complaint filed in the Court, I suppose it is here.

MR. JOHNSON: Well, the clerk doesn't seem to be around.

THE COURT: Call the Clerk, Mr. Bailiff.

Q. (By MR. JOHNSON) What time of day was it you were up at the Central Hotel?

A. Why ,as near as I can recall, somewheres around the noon hour, I believe, somewhere about there.

Q. Was it before or after the noon hour?

A. I wouldn't—I couldn't exactly say the exact hour, but somewheres around there.

Q. Do you recall seeing a colored maid there at the hotel at the time you were there?

A. I believe so, yes.

Q. Now, where is this room located where the liquor was purchased?

A. It is in the front of the building, to the front, facing the street.

Q. How much more liquor was there in that bottle at the time you purchased it?

A. Very little more.

Q. How much of it did you drink?

A. Just a taste of it.

Q. Mr. Marler, when was it that you brought this bottle to Moscow, how many days after you had—

A. Oh, I don't exactly recall.

Q. Mr. Marler, I will show you this affidavit. Is that your signature?

A. Yes.

Q. On the 6th day of June, I mean of November, that is the date, that is the correct date, is it?

A. Yes, sir.

Q. That was sworn to before Mr. O'Neil?

A. Yes.

Q. Did you file, make any affidavit against Ruth Hazelton when you filed this?

A. Not at that—

MR. McEVERS: I object to that as immaterial.

THE COURT: Sustained.

MR. JOHNSON: This is the affidavit, if Your Honor please, which was presented in order to get an information filed against Babe Joyce. On the same identical sale he claims that—

THE COURT: No. Proceed with your evidence.

MR. JOHNSON: Well, pardon me. I didn't catch the ruling.

THE COURT: Objection sustained.

MR. JOHNSON: In order to make the record, we offer in evidence now the affidavit. Will you mark that, please, for identification?

Said affidavit was marked—

DEFENDANT'S EXHIBIT NO. 1.

MR. JOHNSON: We now offer in evidence Defendant's Exhibit No. 1, for identification.

MR. McEVERS: We object to it on the ground that it is immaterial and irrelevant. If the facts as stated by the witness are true, obviously both those parties would be guilty.

THE COURT: Sustained. I am sustaining the objection upon the ground that if what the witness has now stated on the witness stand is true, each

and both of these women would be guilty of violating the prohibition act, and they might be proceeded against jointly or severally.

MR. JOHNSON: So that the Court may understand our position, it is that this witness never made any complaint against Joyce Black—I mean against the defendant, until several months afterwards, and then it wasn't by his instrumentality; it was by somebody else's.

THE COURT: Well, there is no evidence of that. The jury will not consider the statement as a statement of fact.

MR. JOHNSON: That was the purpose of the inquiry along that line to develop that fact.

THE COURT: Well, you can inquire when this complaint was made, if you desire, and what report the witness here made of the facts, and see whether there is any inconsistency. You may show any inconsistency of statement on his part, if there is any, but, as I have already suggested, there is no inconsistency between his complaint against this other woman and the complaint against the woman now on trial.

Q. (By MR. JOHNSON) Mr. Marler, you make your report to the United States Attorney or to the head of your department, as to these various investigations of yours?

A. I do.

Q. When did you first report anything in con-

nection with the defendant, Ruth Hazelton, what date?

A. I don't recall the exact date now, not having my report with me.

THE COURT: Have you any memoranda by which you could verify or refresh your memory?

A. Yes, I have a copy of my case report.

MR. McEVERS: Have you got it with you?

A. I have it upstairs.

Q. (By MR. JHONSON.) Approximately can you give the date? Do you recall whether it was about the latter part of December or the first of January before you ever made a report against Ruth Hazelton?

A. I don't recall the date at all. I haven't anything in my mind that tends to recall the date.

Q. Did you make any report?

A. I did.

Q. Of this affair against Ruth Razelton until over a month after the date alleged there?

A. It was something like that later, yes.

Q. So there was no report made by you to anyone that Mrs. Hazelton had sold you any liquor for over a month until after this transaction?

A. Yes, that is true.

THE COURT: Well, the question is, did you make a separate report with regard to this affair, or did you report the entire transaction at the time, against both women?

A. I made two separate reports.

THE COURT: And you have both of those reports here?

A. No; I have only the Ruth Hazelton report here. Yes, I might have the other in my file. I have my file upstairs. They are all in there.

Q. (By MR. JOHNSON) As I understand you, you made no report charging Mrs. Hazelton with any sale to you of any liquor until over a month after you had reported this transaction as to Babe Joyce?

A. That is correct.

Q. Now when was the next time, when was the first time you recall seeing Mrs. Hazelton after the purchase of this liquor in the Central Hotel?

A. Well, definitely recalling, the time of the arraignment before the commissioner. I had seen her before that time on the street.

Q. Do you recall approrimately the date of that preliminary?

A. No, I do not.

MR. JOHNSON: Does your record show, Mr. McEvers? Have you got anything there to show that?

MR. McEVERS: In the Hazelton case?

MR. JOHNSON: Yes.

MR. McEVERS: Yes, I think so. (Handing paper to Mr. Johnson) There is the paper.

Q. (By MR. JOHNSON) The preliminary examination you recall now as being held on the 5th day of December?



A. I don't recall the date. The commissioner's report shows it.

MR. JOHNSON: That is what the commissioner's transcript shows, is it?

MR. JOHNSON: Yes. It shows that the preliminary was held, Your Honor, on the 5th day of December.

THE COURT: And on a complaint filed at what time?

MR. JOHNSON: On a complaint filed—

MR. McEVERS: The first day of December.

THE COURT: The complaint then was filed about twenty-five days after the alleged offense.

MR. JOHNSON: And the complaint charges a different offense, charges that on the 20th day of November, a different date.

Q. (By MR. JOHNSON) I show you a complaint made before Mr. O'Neil. This is your signature, is it, Mr. Marler?

A. Yes.

Q. Did you file more than one complaint against Ruth Hazelton in the lower court?

A. Not that I recall. I filed a complaint, I think only for the issuance of the warrant.

Q. Mr. Marler, I direct your attention to the fact that you charge the crime in that complaint as having occurred on the 20th day of November.

MR. McEVERS: I object to that as incompetent and immaterial. The offense laid there is

charged on the third count. In other words, I haven't finished my case.

THE COURT: That is of maintaining a nuisance?

MR. McEVERS: Yes, if the Court please.

THE COURT: Oh yes; that wouldn't be fair, Mr. Johnson.

MR. JOHNSON: I appreciate that, but this is with reference to the same identical bottle.

MR. McEVERS: Oh, but it is not.

MR. JOHNSON: I propose by my cross examination to show that it is.

MR. McEVERS: All right then. Don't do it that way.

Q. (By MR. JOHNSON) Mr. Marler, you recall being a witness before Mr. O'Neil on the 5th day of December, 1922?

A. Yes.

Q. Do you recall in reference to the fact of being asked about this bottle, and stating that the bottle was at the marshal's office in Moscow?

A. Yes, sir.

Q. You were testifying as to this same identical bottle, were you?

A. Yes, sir.

Q. And that is the only bottle you were testifying as to having bought from Mrs. Hazelton?

A. It is.

Q. And you charged her with having bought

that bottle from her on the 20th day of November, didn't you?

A. I did not.

Q. Doesn't this state the 20th day of November?

A. That was an entirely different transaction.

Q. Have you got any other complaint in this action but that one?

A. That is all that I know of.

Q. Well, in the complaint that she was arrested on, you were a witness, and you testified solely as to that bottle, did you not?

A. I testified to the date I bought this bottle, yes.

Q. The complaint was made on the 20th day of November—

MR. McEVERS: I object to that on the ground that it is improper and incompetent and immaterial.

THE COURT: Sustained.

Q. (By MR. JOHNSON) You didn't charge any other complaint against this woman yourself?

MR. McEVERS: I object to that as repetition.

THE COURT: Sustained.

Q. (By MR. JOHNSON) Do you recall my asking you the question as to whether or not this bottle that is before you in evidence was not taken to Moscow to be used as evidence against Babe or Joyce Black, and you said that it was?

MR. McEVERS: I object to that on the ground that it is immaterial.

THE COURT: Sustained.

Q. (By MR. JOHNSON) You spoke about the fact that at the time you testified you didn't know which one of these women gave you the dollar and a half. Is that correct?

THE COURT: He has answered that once.

Q. (By MR. JOHNSON) When was your mind refreshed as to which gave you the dollar and a half?

A. Later, after I read my case report over.

Q. So the testimony that you are now giving is based upon the reading of a report that you had made to the officers of the government in connection with the case, is that correct?

A. It is.

Q. Now during that day you weren't back there any other time, on the 6th day of November?

A. No, sir, I wasn't.

Q. Was there anyone with you?

A. No.

Q. I think you have already answered this. That is the only bottle you personally ever claim to have bought from Mrs. Hazelton.

A. Yes.

MR. JOHNSON: That is all.

#### RE-DIRECT EXAMINATION.

By MR. McEVERS.

Q. Mr. Marler, will you just explain now to the jury how it happened that you made a separate case report in the case of Black and Hazelton, and

how you came to file the complaint against Ruth Hazelton on the date that you did?

A. I made my first case report out against Ruth—or Joyce Black, or, as I knew her at that time, “Babe Jane Doe”, after I had purchased this bottle jointly from her and Mrs. Hazelton, because I already, before this purchase, had sufficient evidence to make a case out of against Joyce Black, drinks and such that I had bought with another agent before this time.

Q. That was at the Central Hotel?

A. At the Central house. And at the time of the 6th, the first transaction I ever had with Mrs. Hazelton was this purchase made jointly from Mrs. Hazelton and Joyce Black. And at a later date than that I secured affidavits from two gentlemen who stated that they had—

MR. JOHNSON: If Your Honor please, we object to the contents of any affidavits.

MR. McEVERS: He has gone into this, trying to confuse.

MR. JOHNSON: No. You had the Court rule against me, and I accepted the ruling. But we object on this ground, as absolutely hearsay as to what somebody told him, in the absence of the defendant.

THE COURT: Overruled.

A. At a later date I secured the affidavit from two gentlemen, who stated that they had purchased—

MR. JOHNSON: We object on the other ground that the affidavits would be the best evidence.

THE COURT: Well, you need not state the contents of the affidavits. You mean to say that you procured what you regarded as corroborating evidence?

A. I did, yes.

THE COURT: Against this defendant?

A. Yes, sir.

THE COURT: Proceed.

A. Later I procured this corroborative evidence, and on that corroborative evidence I filed a complaint and conducted a preliminary hearing and had her bound over to this Court.

MR. JOHNSON: That is all.

MR. McEVERS: That is all.

MR. JOHNSON: If Your Honor please, may we have an understanding with counsel that all this evidence, whatever it may be, is excepted to? I don't know—it has been some time since I tried a case in the United States Court, a criminal case. I was always on the government's side. But I don't care to waste time by excepting all the time.

THE COURT: You will have to take your exceptions here. It wouldn't do any good for you and counsel to agree, because the appellate court would give no attention to it unless you take your exceptions.

W. H. GRASTY, produced as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By MR. McEVERS.

Q. Will you state your name?

A. W. H. Grasty.

Q. Where do you live, Mr. Grasty?

A. Port Orford, Oregon.

Q. What is your business?

A. Working on the highway.

Q. I will ask you whether or not you were in Lewiston on or about the 20th day of November, 1922?

A. I was.

Q. Did you see Ruth Hazelton on that date?

A. I did.

Q. I will ask you whether or not you had any dealings with her on that date concerning intoxicating liquor?

A. Well, on that day I was with another party that took a drink that he bought from Mrs. Hazelton.

Q. Did you see him make that purchase?

A. I did.

Q. Did you have anything to drink there yourself on that day?

A. I took a drink of whiskey that this gentleman purchased.

Q. What kind of liquor was it?

A. I should pronounce it moonshine whiskey.

Q. That is the regular moonshine whiskey that is—

A. I should judge so, yes.

Q. By THE COURT) Where was that?

A. In the Central Hotel, Lewiston, Idaho.

Q. (By MR. McEVERS) Just relate what occurred there at that time. Give us the entire transaction, if you can, as to what was said and done.

A. As near as I remember, I met this gentleman on the street, and I had met him once before, and he just come into town I believe from Pullman or Colfax or somewheres down the line, and I told him I was going up to bed, and he went up to get a room, and we were standing by the stove getting warm, and Ruth Hazelton came out there and she asked me if this gentleman was all right, and I told her as far as I knew he was perfectly all right, and so she proposed that he buy a drink of whiskey, and he said all right. So we went into my room. I had room 6, right next to the stove. And she came in there with a bottle and poured us out a drink each, and he paid for it.

Q. Had you ever purchased any liquor from Ruth Hazelton before that?

A. I had, yes, sir.

Q. There at the Central Hotel?

A. Yes, sir.

Q. Approximately how long before?

A. About three days before.



Q. And what kind of liquor was that?

A. The same kind.

Q. Moonshine whiskey?

A. Yes, sir.

Q. And did you pay for that?

A. I did.

Q. How much.

A. Fifty cents a drink.

MR. McEVERS: You may inquire.

CROSS EXAMINATION.

By MR. JOHNSON.

Q. Who was the gentleman that was with you?

A. I believe his name was Mishler, as near as I can remember. I wouldn't be positive, but that is the way I understood it.

Q. You say Mr. Mishler came up there with you, and Mrs. Hazelton asked him about buying a drink?

A. Yes, sir.

Q. Who was with you when you bought a drink three days before?

A. No one was with me.

Q. You were alone?

A. Yes.

Q. You were asked about this in Lewiston, were you not, by the police?

A. Well, I believe I was, yes, sir.

Q. I will ask you whether or not you didn't state when they asked you if you had bought any liquor of Mrs. Hazelton, that you had not?

THE COURT: No, you needn't answer that. The only purpose of this would be to lay the foundation for impeachment, and of course it isn't sufficient.

Q. (By MR. JOHNSON) Well, you were arrested by the police in Lewiston at what date?

MR. McEVERS: I object to that.

MR. JOHNSON: Just fix the—

THE COURT: Ask him first whether he—

Q. (By MR. JOHNSON) Were you arrested by the police in Lewiston after this transaction?

A. Yes, sir.

Q. About how many days afterwards?

A. About five.

Q. About five days?

A. Yes.

Q. Now I will ask you whether or not on or about the 25th day of November, 1922, at Lewiston, in the police station at Lewiston, you didn't state to Eugene Gasser, the chief of police of the City of Lewiston, that you had not bought any liuor from Mrs. Hazelton, and that she had not sold you any liquor, or given you any liquor. I will ask you if you didn't so state?

A. I think not sir.

Q. And I will ask you if they didn't repeatedly state to you and ask you whether or not Mrs. Hazelton hadn't sold you liquor?

MR. McEVERS: I object to that.

THE COURT: That is immaterial.

Q. (By MR. JOHNSON) I will ask you whether or not it was only after the police made some promises to you in your own case that you state that Mrs. Hazelton had sold you any liquor?

A. I don't remember just when I told them. I believe it was after—They made no promises.

Q. It was after they led you to believe that your interests would be served by testifying against Mrs. Hazelton, was it not?

A. In a way, yes. They never came out and openly asked me that question.

Q. You never stated to them that you had bought any liquor or that she had given you any liquor or that you were present when any liquor was sold—

MR. McEVERS: Objected to on the ground that it is immaterial.

THE COURT: Sustained.

MR. JOHNSON: An exception.

Q. (By MR. JOHNSON) You yourself served a term in the county jail for violation of the liquor law?

THE COURT: No. Upon what theory do you ask that question?

MR. JOHNSON: This is preliminary to the same line of questions I am asking, not for the purpose of impeachment.

THE COURT: It is for the purpose of prejudicing the jury?

MR. JOHNSON: No. It was for the purpose of showing that it was due to the fact that he had been arrested that some promises were made to him provided he would come through and testify against Mrs. Hazelton.

THE COURT: No.

Q. (By MR. JOHNSON) I will ask you whether or not you were not tried, convicted, and sentenced to the Oregon State Penitentiary from Umatilla County for grand larceny, and served a term in the Oregon State Penitentiary for grand larceny?

A. I was, yes, sir.

MR. JOHNSON: That is all.

#### RE-DIRECT EXAMINATION.

By MR. McEVERS.

Q. When was it that you served this term in the Oregon penitentiary?

A. It was right along in the early nineties, about ninety-one, I believe, if I remember right.

Q. And what was the charge?

A. Larceny.

Q. And what were the facts of the case, briefly?

A. Well, sir, it was moving some property that was mortgaged.

Q. Did you hold a mortgage on that property?

A. No, sir. I was moving it for other parties.

Q. You were an employe?

A. Yes, sir.

Q. And how long had you lived at the hotel—I will ask you whether or not you roomed at the Central Hotel in Lewiston prior to November 20th?

A. I went there on the 16th, if I remember right.

Q. Of November?

A. Yes, sir.

Q. And you were rooming there on the 20th?

A. Yes, sir.

Q. Where were you when you were arrested?

A. I was arrested in room 6, Central Hotel.

Q. Who was this other man that was with you on the 20th?

A. His name was Mishler.

MR. McEVERS: That is all.

#### RE-CROSS EXAMINATION.

By MR. JOHNSON.

Q. Was anyone rooming with you in room 6?

A. No, sir.

Q. You had the room alone?

A. Yes.

Q. Was it occupied by you exclusively?

A. Exclusively by me, and of course there was times when I took a friend or two up with me, or something of that kind, and that was all.

MR. JOHNSON: That is all.

MR. McEVERS: That is all. Call Mrs. Samuelson.

(Witness excused.)

MRS. SADIE SAMUELSON, produced as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By MR. McEVERS:

Q. Will you state your name?

A. Mrs. Sadie Samuelson.

Q. Are you a Miss or Mrs.?

A. Mrs.

Q. And where do you live now, Mrs. Samuelson?

A. In Spokane, Washington.

Q. I will ask you if you formerly lived in Lewiston?

A. Yes, sir.

Q. When did you live down there?

A. I lived there last fall.

Q. Were you there in November?

A. Yes, sir.

Q. Do you know Ruth Hazelton?

A. Yes, sir.

Q. Have you ever visited or been around the Central Hotel in Lewiston?

A. Yes, sir.

Q. I will ask you whether or not during the fall or the month of October or November, 1922, you saw Ruth Hazelton sell any intoxicating liquor in the Central Hotel in Lewiston?

A. Yes, sir.

Q. About when was the first time that you remember?

A. Well, the first time I was there and had liquor was during fair week.

Q. And what were the transactions then as you remember them?

A. Well, the first night that I went up there was during fair week, and I went up to see her in regard to buying the rooming house from her, and when I went up there there were three gentlemen sitting in a little sitting room, and a friend of mine was there, and she introduced me to the fellows that were there, and they were buying a drink, and asked us to take a drink with them, which we did.

Q. And what was it you got?

A. I think it was moonshine.

Q. When was it you were up there again, if you remember, Mrs. Samuelson?

A. I can't just remember the next time I was up there. I was up there two or three different times.

Q. And was liquor sold on each occasion?

A. Yes, sir.

Q. Do you remember any other specific time?

A. Well, just the night before she went away I was up there and had a drink there.

Q. Did you have any conversation with her concerning her going away?

A. Yes, sir.

Q. Do you know whether or not she left anyone in charge of the building when she went away?

A. Yes, sir.

Q. Who did she leave?

A. She left a girl by the name of Babe; I don't remember her last name.

Q. Did you have any conversation with Mrs. Hazelton concerning whether or not this Babe was her employe?

A. Well, she had taken care of the place for her at one time, and she was going to leave her there in charge of the place while she was gone.

Q. When did she come back, if you know?

A. She came back the 5th day of November.

Q. How do you remember that, Mrs. Samuelson?

A. Well, the way I remember it is because my note was due on the 5th, and I was paying my notes to Mr. Hattabaugh, and he called me up on Saturday and asked me if I remembered my note was due. I told him I did, and he said, "It comes due on Sunday. Do you care to pay it today"? And I said, "No, I am not going to pay it until she comes back, because there is a dispute about my lease, and I wanted it straightened out before I pay any more money," and he said it was all right, and she came back the next day.

Q. It was Saturday you had this conversation?

A. Yes, sir, and she came back Sunday, and she called me up, and I told her I wished she would



come up, and she came up and talked it over, and Monday we went out and the lease was turned over to me, and Tuesday I went up and paid my note.

Q. Have you got that note with you?

A. Yes, sir.

Q. May I see it?

(Witness handed paper to Mr. McEvers.)

Said note was marked—

PLAINTIFF'S EXHIBIT NO. 2.

Q. Handing you for identification Government's Exhibit 2, I will ask you whether or not that is the note? Just look at it. Is that the note you say you had given to Ruth Hazelton?

A. Yes, sir.

Q. This is signed by Bessie Wilson. Whose name is that?

A. That is the name I took when I bought the place from her.

Q. You were going under that name at that time?

A. Yes, sir.

Q. How did it come that you were under that name at that time?

A. I took the name because I had a sister living in Clarkston, and I didn't care that she should know I was in town.

MR. McEVERS: I wish to offer in evidence Government's Exhibit 2. I wish to offer in evidence the date of its making, and the date it was

due, and the date payable, and the names of the parties. Any objection?

Reading from Government's Exhibit 2: Lewiston, Idaho, October 5, 1922. \$100. Thirty days after date, without grace, I promise to pay \$100 in gold coin, and so on, at maturity, to the order of Ruth Hazelton, and due November 5, 1922. Signed, Bessie Wilson. Marked paid November—I am not certain as to what the date is,—1922.

Q. Do you know what that date is?

A. The 7th.

MR. McEVERS: Paid.

Q. Where are you living now, Mrs. Samuelson?

A. At Spokane, Washington.

Q. To whom did you first talk, if anyone, of the government officers, about this case?

A. The first one I talked to was Mr. Marler.

Q. And when was that?

A. That was last Thursday. He called me over the phone.

Q. I will ask you whether or not you were subpoenaed to come here?

A. I wasn't subpoenaed, but I came here.

Q. You were requested to come, over the phone?

A. Yes, sir.

Q. And had a subpoena served on you when you got here?

A. Yes, sir.

Q. Who requested you to come, over the phone?

A. Mr. Marler.

MR. McEVERS: You may inquire.

CROSS EXAMINATION.

By MR. JOHNSON.

Q. Who did you first tell about buying any liquor?

A. I don't know. I have talked with several people.

Q. Had you ever talked with a government officer about buying anything there?

A. No, sir.

Q. They didn't know anything about your buying any liquor there?

A. No, sir.

Q. What did Mr. Marler say he wanted you for?

A. He said he wanted me as a witness on this Hazelton case.

Q. He didn't know what you were going to testify to?

A. I couldn't say.

Q. You owed some more money besides this to Mrs. Hazelton, didn't you?

A. Yes, there was four other notes to be paid, but I turned the place back to her, and she took it back, and she promised me when she sold the place she would give me back \$200 that I had paid for it, and also pay me for some furniture I put in there.

Q. She hasn't done that?

A. She hasn't done that.

Q. You tried to get her to give you back some money you put in there?

MR. McEVERS: I object as immaterial.

THE COURT: I think I will let her answer this question.

A. I didn't try to get her to. I just called her and asked her if she was going to give me the money she promised me, and she said no, and she talked very mean to me over the phone.

Q. I will ask you if you didn't state to her that if she didn't give you that money you would make it hot for her?

A. I did not.

Q. I will ask you if about a week ago you didn't call Mrs. Hazelton and threaten her if she didn't pay you that money?

A. No, sir; I did not.

Q. And didn't you say to her that if she wouldn't pay you that money you would make it hot for her?

A. No, sir; I did not.

Q. I will ask you if you didn't go, after that, and tell some of the officers in reference to what you claim you have now testified to?

A. No, sir; I have not talked to no officers.

Q. Never talked to anyone?

A. No, sir; I did not.

Q. Never talked to Mr. Marler?

A. No, sir.

Q. And he didn't know what you were going to testify to?

A. I was talking to an attorney there.

Q. Did you ask the attorney to inform the officers of the government?

A. No, sir; I did not.

Q. Was it a government attorney?

A. No, sir; not to my knowledge he wasn't.

Q. And when do you say this occurred, this sale of liquor?

THE COURT: Which one?

Q. (By MR. JOHNSON) The first one that you—

A. It was one night during fair week.

Q. Of what year?

A. 1922.

Q. And who was present?

A. Well, there were three gentlemen and a friend was with me.

Q. What were their names?

A. The fellow that was with me was Walter Miller, and the other two fellows was Jake Miller, and one was Fred Frem, and a fellow by the name of Munday, from Waha.

Q. And you claim they were present when Ruth Hazelton sold some liquor, do you?

A. Yes, sir.

Q. Did you drink yourself?

A. Yes, sir.

Q. When was the next time?

A. I can't just remember the date I was up there.

Q. About what time do you think it was?

A. Well, I know it was one night just before she left.

Q. Do you know when she left?

A. I don't just remember the date.

Q. Was it along the fore part of October?

A. Yes, sir.

Q. And it was before that time?

A. I went there and took the place on Thursday, and she left either Monday or Tuesday, I am not positive.

Q. You bought from her the Kendrick rooms?

A. Yes, sir.

Q. And this note was a part of the consideration?

A. Yes, sir.

Q. (By THE COURT) That was another rooming house?

MR. JOHNSON: Another rooming house.

Q. (By MR. JOHNSON) Then this note was paid on the 7th of November?

A. Yes, sir.

Q. Mrs. Hazleton got back, as I understand you, on the 5th?

A. Yes, sir.

Q. And you went with her on the 7th and paid this note?

A. No. I went with her on the 6th out to the landlady and the landlord to have the lease transferred in my name, and on the 7th I went up to

Mr. Hattabaugh and paid him myself. She wasn't with me.

Q. What did you say your name was now?

A. Mrs. Sadie Samuelson.

Q. Did you say you were married?

A. Yes, sir.

Q. What is your husband's name?

A. D. C. Samuelson.

Q. What does he do?

A. He is a machinist.

Q. Where is he living?

A. He is living in Council Bluffs, Iowa.

Q. What are you doing in Spokane now?

A. I am doing chamber work.

Q. Whereabouts?

A. At the Lorraine Hotel.

Q. How long have you been there at Spokane?

A. I have been there since last November.

Q. Did you leave after this time, November?

A. Well, I have been away from there a couple or three different times?

Q. Did you go back after you left?

A. Yes, sir.

Q. You gave up the Kendrick Rooms?

A. Yes, sir.

Q. Do you recall about when that was, Mrs. Samuelson?

A. The 16th day of November.

Q. The 16th day of November?

A. Yes, sir.

Q. And most of the time you have been in Spokane, since?

A. Yes, sir.

Q. How much did you agree to pay for the hotel at the time you gave this note?

A. I agreed to pay \$600.

Q. And how much had you paid when you—

A. \$200.

Q. Leaving \$400 still unpaid.

A. Yes, sir.

Q. And was it the \$200 that you had paid that you wanted back?

MR. McEVERS: I object to this as immaterial, and repetition.

THE COURT: Sustained. It is repetition.

Q. (By MR. JOHNSON) Was your husband living with you in Lewiston?

A. No, sir; he was not.

Q. When you left Lewiston who did you go with?

A. I didn't go with anybody.

Q. At the time you signed this note did you know a man that was a cook at the Bollinger Hotel named Wilson?

A. No, sir; there was not.

Q. But in any event that was not your name?

A. No, sir.

Q. That isn't your name, Bessie Wilson?

A. No, sir.

Q. Showing you Plaintiff's Exhibit 2. Who did



you go to Spokane with? I don't know whether I asked you that question or not?

A. You did ask me. I didn't go with anybody; I went with myself.

Q. Was it the first or the second time that you claim you were at the Central Hotel and saw drinks or got drinks that Jake Miller—

A. The first time. . .

Q. And the second time, was Jake Miller present then?

A. No, sir; he was not.

Q. Who was present the second time?

A. I don't know. There was some man there she said was a painter. I don't remember his name.

Q. Jake Miller is a painter, isn't he?

A. I believe he is, yes.

Q. But there was some other painter?

A. Yes, sir.

Q. Anybody else besides this painter?

A. No.

Q. Did you have a drink then?

A. Yes, sir.

Q. Who gave you the drink?

A. Mrs. Hazelton.

Q. Where was she at the time she gave you the drink,—this man's room?

A. No, sir. She was in the little sitting room.

Q. There was only two times you have testified to being up there and seeing drinks?

A. Yes, sir.

Q. Just twice?

A. Yes.

Q. Have you drank much moonshine whiskey?

A. I have had some, yes.

Q. You know the taste of it then?

A. Yes, sir.

Q. This wasn't Scotch?

A. No, sir.

Q. It was moonshine?

A. Yes, sir.

Q. How many drinks did you have?

A. Well, the first night there was three drinks bought, and the next night there was a couple bought.

Q. Did you drink each time yourself?

A. Yes, sir.

Q. How large a drink did you take?

A. Not a very large one.

A. Half a tumbler full?

A. No.

Q. Well, a quarter of a tumbler full?

A. No.

Q. Well, a whiskey glass full?

A. No, sir.

Q. Did you take any water with the moonshine?

MR. McEVERS: I object to this on the ground that it is immaterial.

THE COURT: Sustained.

MR. JOHNSON: That is all.

MR. McEVERS: Call Mr. Gasser.

EUGENE GASSER, produced as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By MR. McEVERS.

Q. Will you state your name?

A. Eugene Gasser.

Q. Where do you live?

A. Lewiston, Idaho.

Q. And what is your business?

A. Chief of Police.

Q. How long have you occupied that position?

A. About five years.

Q. I will ask you whether or not you in company with members of the sheriff's office made a search of the Central hotel in the fall of 1922?

A. We did.

Q. Do you remember the date?

A. I think it was June 21, 20th or 21st.

Q. June 21st, in the spring of 1922?

A. Yes, sir.

Q. Who was with you at that time?

A. Sheriff Welker.

Q. And did you search for intoxicating liquors?

A. We did.

Q. What did you find?

A. We found about fourteen pints of beer.

Q. Did you make an arrest of the defendant at that time?

A. We did.

MR. McEVERS: I will have marked for identification Government's Exhibit 3.

A certain paper was marked—

PLAINTIFF'S EXHIBIT NO. 3.

Q. Handing you for identification Government's Exhibit 3, I will ask you what that is? If that a record of your—

A. It is our police record.

Q. And is that the charge that was made against Ruth Hazelton at the time you found this beer?

A. Yes, sir.

Q. You took her into police court, did you?

A. Yes, sir.

Q. And what did you charge her with?

MR. JOHNSON: Wait a minute and let me see the record.

Q. (By MR. McEVERS) This will show the charge and the result of that transaction?

A. Yes, sir.

MR. McEVERS: I offer in evidence at this time Government's Exhibit 3.

MR. JOHNSON: Objected to as wholly incompetent, irrelevant and immaterial for any purpose, doesn't tend to prove or disprove any of the allegations.

THE COURT: Sustained.

MR. McEVERS: We offer it, if the Court

please, for the purpose of showing that—I take it it would be material if she was arrested growing out of that transaction. She entered a plea in court.

MR. JOHNSON: This isn't a record of the police court, is it?

MR. McEVERS: Yes.

Q. Is this the record of your police court?

A. Yes, sir.

THE COURT: Let me see it. I thought he said it was, a record of the police office.

MR. McEVERS: Police court, he said.

THE COURT: I am not very familiar with police court records. Is this the only judgment that would be entered?

MR. McEVERS: Maybe Mr. Gasser can tell us.

Q. Is this the record of the police court, Mr. Gasser?

A. Yes, and we have another ledger and transfer it from this into the other book.

Q. But this is the original entry?

A. This is the original, date of the trial and the sentence.

THE COURT: I don't think I will permit this to go in in its present form. It is so very meager, and I notice the charge is not of having liquor.

Q. (By MR. McEVERS) She was arrested at the time you made the search there, was she?

A. Yes.

Q. (By THE COURT) Let me ask you now, when you make an arrest such as in this case do you

file a complaint, or just make an oral charge?

A. We make an arrest in this kind of a case. She was charged with disorderly conduct, and pleaded guilty. That is brought under the—

Q. You don't make a written complaint?

A. No, Your Honor.

Q. You just go in and make a statement, your charge?

A. That is all.

MR. McEVERS: May I ask him a question or two then?

Q. In this particular instance, after you arrested the defendant, did you make such an oral charge?

MR. JOHNSON: We object to this. This, of course, is preliminary, but we object to the witness testifying anything of the kind, as incompetent, irrelevant and immaterial, for any purpose.

THE COURT: Mr. Johnson, I am not quite sure that I understand police court practice, but is it not possible in police court practice to have an oral charge made, or is it necessary to file a written complaint?

MR. JOHNSON: If the police officer should in the first instance discover someone actually in the commission of a crime he could take them into custody, and then a complaint would be filed. This is not a record of the police court; this is a record of the chief of police.

THE COURT: This says police court.

MR. JOHNSON: Well, I know, but this is the chief of police's record.

THE COURT: Is this your own record, or the record of the police judge?

A. This is the police judge's writing and his record.

MR. JOHNSON: Then we object, Your Honor, as not properly identified, and on the other ground, as Your Honor has already ruled, it is another charge entirely.

THE COURT: Counsel is now trying to get an explanation of the charge. I think I will let him answer.

MR. JOHNSON: Save an exception.

Q. (By MR. McEVERS) Did you yourself make an oral charge against her, Mr. Gasser?

A. I charged her on the book with disorderly conduct, on our regular blotter, and the next day we had a trial, and she pled guilty to disorderly conduct, and paid \$200 fine, as shown there in the record.

Q. And that grew out of the transaction of the arrest you made.

MR. JOHNSON: We object to that, if the Court please.

THE COURT: Sustained.

MR. McEVERS: You may inquire.

## CROSS EXAMINATION.

By MR. JOHNSON.

Q. Mr. Gasser, did you analyze the beer?

A. I did not.

Q. Do you know whether it contained more than one-half of one per cent of alcohol, or any other per cent of alcohol?

A. I couldn't say.

Q. What became of the beer?

A. It was destroyed after the—

Q. Do you know anything about whether it was near beer or real beer, or what it was, of your own knowledge?

A. Of my own knowledge, I probably think it was home brew.

Q. I am asking you if you know.

A. I do not.

Q. You don't know what percentage of alcohol, whether it contained more than one-half of one per cent or not, do you?

A. I do not.

Q. Did you have a search warrant when you went up there?

A. I did.

Q. Where is the search warrant?

MR. McEVERS: Objected to as incompetent, irrelevant, and immaterial.

THE COURT: Sustained.

MR. JOHNSON: Save an exception.

Q. Where did you find what you said was beer?



A. Found it in the ice box.

Q. Now at that time Mrs. Hazelton was around there on a wheel chair, wasn't she?

A. Yes, sir.

Q. I will ask you whether you don't know that she had just had a surgical operation on her feet?

A. She so stated.

Q. She was unable to go to the station at all, wasn't she?

A. She was.

Q. And later she was notified to come down there?

A. Yes, sir.

Q. And she had to be carried down part of the way, did she not?

THE COURT: How is this material, Mr. Johnson? If she got there it is wholly immaterial to us as to whether she walked or rode.

MR. JOHNSON: It is for this purpose, if Your Honor please. It is just to show that the woman was in such condition that she would plead guilty to anything in order to get back. And as far as that was concerned, she wasn't charged with liquor anyway.

THE COURT: Well, let us not take the time—

MR. JOHNSON: At this time we move to strike all of the evidence of the witness as absolutely incompent, irrelevant and immaterial, and before Your Honor makes a ruling, perhaps it is not necessary, but I have a recent decision of the Cir-

cuit Court of Appeals on the very question.

THE COURT: What question is it?

MR. JOHNSON: On the question with reference to beer, where they have no analysis.

Q. (By THE COURT) Why did you take this liquor, Mr. Gasser?

A. Why, we thought it contained alcohol.

Q. Did you taste it?

A. We tasted it.

Q. You concluded it did contain alcohol?

A. Well, Your Honor, she pleaded guilty to disorderly conduct, and the case was settled that way, without having it analyzed.

Q. You tasted it before you took it down there?

A. Yes, sir; I tasted it. I couldn't say whether it contained liquor or not.

Q. Alcohol or not?

A. Alcohol.

MR. McEVERS: I have another witness who was present with him.

THE COURT: Very well. I will defer action on the motion just made until—

MR. McEVERS: That is all.

MR. JOHNSON: That is all for the present.

MR. McEVERS: That is all, Mr. Gasser. Call Mr. Welker.

(Witness excused.)

GEORGE W. WELKER, produced as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By MR. McEVERS.

Q. Please state your name.

A. George W. Welker.

Q. And you are sheriff—

A. Of Nez Perce County.

Q. You were sheriff in June, 1922, were you not, Mr. Welker?

A. Yes, sir.

Q. And were you with Mr. Gasser on the day you searched the Central Hotel?

A. I was.

Q. What did you find there?

MR. JOHNSON: If the Court please, if this is right along the same line, we object as incompetent, irrelevant, and immaterial.

THE COURT: Overruled.

Q. (By MR. McEVERS) What did you find there?

A. We found some home brew, that is, that is what we pronounced it, in the ice chest.

Q. How much did you find?

A. Well now, I didn't keep check on the bottles, but I should judge a dozen or more bottles.

Q. Did you make an examination of that, Mr. Welker?

A. I just opened a bottle right there, and that was all. There was no test made of it of any kind.

Q. Did you either smell or taste of it?

A. Yes, I smelled and tasted of it.

Q. Are you familiar with the smell and taste of beer?

A. Well, of course we get hold of some of that home brew occasionally. I can't say that I am.

Q. You wouldn't say you were able to examine it and be able to know what it is?

A. Well, it is made in so many different forms by different parties that—but that is what we concluded it was, was home brew.

Q. Do you know how that home brew beer is made?

A. No, I don't.

Q. In a general way?

A. Well, in a general way, well, no, I can't say that I do. I wouldn't know what ingredients to get to make a home brew.

Q. Do you know whether or not it is made by a process involving the fermentation of malt?

A. Yes, I think it is. I think that is—I have been told so. I don't know of my own knowledge what is in it.

Q. Have you ever found any of it in the process of manufacture when search was made?

A. Yes, I have seen it in almost all stages.

Q. Then I will ask you whether or not that you have seen on these searches and raids was made by a process involving fermentation of malt?

MR. JOHNSON: I object, if the Court please as incompetent, irrelevant, and immaterial, and the witness has not shown himself competent to testify.

MR. McEVERS: I think the statute defines a malt liquor or a beer as being intoxicating as a matter of law, a malt liquor as being intoxicating if it contains more than one-half of one per cent alcohol. If it is made by malt in process of fermentation, then it is a malt liquor.

THE COURT: Well, the statute doesn't name malt liquor.

MR. McEVERS—Any spirituous, malt or fermented liquor containing more than one-half of one per cent alcohol.

THE COURT: That isn't my recollection of the statute. It is any kind of liquor containing more than one-half of one per cent. But that would be an immaterial difference perhaps.

MR. McEVERS: Yes, I think it would.

THE COURT: Because you would have to have your one-half of one per cent alcohol anyway.

MR. McEVERS: That is all.

Q. (By THE COURT) You wouldn't be able to say that it contained any alcohol?

A. No, I couldn't say.

MR. JOHNSON: We would like to make the same motion on this one.

THE COURT: Well, if you are through on this matter, the motion will be sustained.

MR. JOHNSON: May we ask the Court to instruct the jury not to consider that evidence?

THE COURT: The jury will not consider that the liquor found in this so-called raid was neces-

sarily intoxicating liquor, that is, there is no proof sufficient to establish what this liquor was or what these bottles contained.

MR. McEVERS: The Government rests.

THE COURT: I think we will take a recess, gentlemen. Gentlemen of the jury, during the recess of the Court be careful not to overhear any discussion of this case or of liquor cases generally. Keep your minds entirely free from outside influences, so that you may decide this case from the evidence as adduced here, and upon nothing else. I think we will take a recess, gentlemen, until one-thirty today instead of two o'clock. Remember the hour—one-thirty.

Accordingly, at 12:10 P. M., a recess was taken until 1:30 P. M. of this date, Tuesday, May 22, 1923.

1:30 P. M., Tuesday, May 22, 1923.

THE COURT: You may proceed, gentlemen.

MR. JOHNSON: Call Mrs. Jones.

MRS. FRANCES JONES, produced as a witness on behalf of defendant, being first duly sworn, testified as follows:

#### DIRECT EXAMINATION.

By MR. JOHNSON.

Q. State your name.

A. Frances Jones.

Q. Where do you reside, Mrs. Jones?

A. 0227 Seventh Street, Lewiston, Idaho.

Q. About how long have you lived in Lewiston?

A. Pretty near three years.

Q. Are you acquainted with Mrs. Ruth Hazelton, the defendant in this case?

A. I am.

Q. About how long have you known her?

A. I guess about two and a half years, just about.

Q. Do you work for her?

A. Yes, I do.

Q. In what capacity?

A. Maid.

Q. How long have you worked for her?

A. Going on two years and a half.

Q. I direct your attention, Mrs. Jones, to the month of October and the fore part of November of 1922. Do you recall of Mrs. Hazelton having taken a trip east during the month of October, that period of time?

A. Yes.

Q. Who was in charge of the place at the time she left or while she was away?

A. Well, it was a lady that I called "Babe", knew as "Babe".

Q. Do you recall when Mrs. Hazelton returned from the trip east?

A. I think it was on Sunday.

Q. That would be the 5th or 6th of November?

A. Yes.

Q. 1922?

A. Yes.

Q. Of whom does Mrs. Hazelton's family consist, what is her family?

A. A son, as I know it.

Q. And her husband?

A. Yes.

Q. What age is her son?

A. I think he is about 9 or 10, 10 I think.

Q. About what time in the afternoon of Sunday was it that Mrs. Hazelton returned to Lewiston?

A. I wasn't there.

Q. You wasn't there?

A. No.

Q. Well, the next day were you there when Mrs. Hazelton left?

A. Yes.

Q. About what time did she leave?

A. Well, it was after I came to work some time.

Q. Were you informed where she was going?

A. She was going to see her son.

Q. Where was her son?

A. In Colton.

Q. Colton, Washington?

A. Yes.

Q. Who went with her, do you know?

A. No.

Q. Now on the morning, do you recall when she returned?

A. On the morning when she returned?



Q. No, I say do you recall when she returned that morning, on the 6th day of November, do you remember when she returned?

A. I wasn't there.

Q. When do you leave? What is your ordinary employment?

A. Well, I don't have no particular time. When I get through with my work I go.

Q. Well, generally about what time?

A. About 12 o'clock.

Q. Were you in the court room this morning when Mr. Marler, the Federal Agent, was testifying as to having purchased a bottle of liquor up there at the Central Hotel?

A. Yes.

Q. Are you the only colored maid that there is there?

A. Yes.

Q. And I will ask you if you recall the episode as testified to by Mr. Marler, of his being there and purchasing a bottle of liquor from Babe or Joyce Black, and also saying that Mrs. Hazelton was there, do you recall that testimony?

A. Yes.

Q. Was the woman that was there with Babe Black Mrs. Hazelton, the defendant?

A. No.

Q. Who was she?

A. Well, I don't know her name.

Q. Had she been around the hotel for some time?

A. Well, yes, she had been there. She roomed there.

Q. What room was she in, do you recall?

A. Room 5.

Q. And Mrs. Hazelton after she left informing you she was going to Colton, didn't return until after you had left the hotel?

A. No, I didn't see her any more.

Q. What size woman was this woman that was with this Babe or Joyce Black referred to by Mr. Marler?

A. Oh, I guess she was—well, I don't know if she was a little heavier than I am or not, but she had kind of light hair and kind of light complected.

Q. You don't know her name?

A. No, I didn't know her name.

Q. Did you have anything to do with running the hotel, other than act as maid?

A. Well, sometimes I would tell them when someone came.

MR. JOHNSON: Take the witness.

#### CROSS EXAMINATION.

By MR. McEVERS:

Q. You say you live on Seventh Street in Lewiston?

A. Yes.

MR. JOHNSON: Second Street.

Q. (By MR. McEVERS) Second Street, is it?

A. No, Seventh Street.

Q. You don't live at the Central rooming house?

A. No, I only work there.

Q. What time of the day do you go to work?

A. Well, I go sometimes after nine o'clock and sometimes after that.

Q. And what time do you leave?

A. Well, as I say, I leave sometimes before and sometimes after twelve o'clock, when I get my work done.

Q. You are usually not there in the afternoon then?

A. No.

Q. What time of day was it that Mr. Marler came up there and made this purchase of liquor?

A. Well now, I don't remember seeing Mr. Marler. I don't know anything about him.

Q. You don't remember of ever seeing him there?

A. No, I don't remember Mr. Marler.

Q. Well then, you don't know whether this other woman was there at that time or not?

A. Which other woman?

Q. Whoever she was. As a matter of fact, you don't know anything about that transaction, do you?

A. I know I was there that day.

Q. Just how do you know if you never saw Mr. Marler before?

A. I say I don't remember Mr. Marler. There was so many—I don't remember Mr. Marler.

Q. There was so many purchases of liquor there that you don't know who it was?

A. No, I never said anything about liquor.

Q. How do you identify Mr. Marler as being there at all?

A. I haven't said anything about liquor.

THE COURT: She stated she didn't know whether Mr. Marler was there at all.

MR. McEVERS: That is all.

MR. JOHNSON: Mr. Marler, will you return to the witness stand for a question. I want to recall Mr. Marler for the purpose of a question.

MR. McEVERS: I assume you are recalling him as your witness.

MR. JOHNSON: Absolutely, for the purpose of this question.

FRANK M. MARLER, a witness heretofore duly sworn on behalf of plaintiff, upon being recalled in behalf of defendant, testified as follows:

DIRECT EXAMINATION.

By MR. JOHNSON.

Q. Mr. Marler, do you recall the colored maid coming to the door at the time of this transaction and speaking about some coal?

MR. McEVERS: I object to it as immaterial.

THE COURT: Sustained.

MR. JOHNSON: The purpose is to show that

this did happen, whoever it was. We will show by the witness that she did go and speak to somebody about some coal. That is the purpose of the question. The purpose of the question is to show that this colored maid came to the door and inquired about coal, and then we put the witness on the stand to show that at the time she inquired about the coal Mrs. Hazelton was not there, and that is the time she is testifying to.

MR. McEVERS: Simply trying to get her now to testify to something she refused to when she was on the stand.

MR. JOHNSON: She knows about the coal proposition, and we will show by the witness that the maid did come and ask about coal when he was there.

MR. McEVERS: She didn't so testify.

MR. JOHNSON: Of course she hasn't yet because there was no chance to until I ask him to identify the transaction. We will show by Mr. Marler that this maid did come and speak about the coal.

THE COURT: I know, but that might have occurred—

MR. JOHNSON: No,—at this particular time, if Your Honor please.

THE COURT: Well, he may answer.

Q. (By MR. JOHNSON) Will you state whether or not the maid came there to the door and

spoke about the coal while you were there with these two ladies or these two women?

A. She was in the hall and she come into the room and asked, I think she said, "I will get another bucket of coal and go," or something like that.

MR. JOHNSON: That is all. Now, Mrs. Jones, if you will take the stand again.

(Witness excused.)

MRS. FRANCES JONES, heretofore duly sworn on behalf of defendant, upon being recalled, testified as follows:

#### DIRECT EXAMINATION.

By MR. JOHNSON.

Q. Directing your attention again, Mrs. Jones, I will ask you if you recall speaking to Babe Joyce—

THE COURT: No, don't lead her.

MR. JOHNSON: Well, that is true.

THE COURT: Yes, it is rather an unusual course you have taken.

MR. JOHNSON: Yes, that is what threw me off.

Q. Will you state what occurred there, if anything, in reference to some coal?

MR. McEVERS: I object until the time and place is laid.

MR. JOHNSON: Well, on the 6th day of November, at the Central Hotel in the front part of the rooms.

MR. McEVERS: I object to that until it is

shown that she knows what occurred on that date. The thing is all away up in the air.

MR. JOHNSON: We can't put in all our evidence at one time. We will show by the witnesses that Mrs. Hazelton didn't get there until the middle part of the afternoon. This woman wasn't there when Mrs. Hazelton returned.

MR. McEVERS: That has nothing to do with the competency of what she is trying to testify to now.

MR. JOHNSON: It identifies the fact that this episode he is talking about was with another woman, not Mrs. Hazelton. She did speak to them about the coal.

MR. McEVERS: I object to counsel testifying.

MR. JOHNSON: I think I can make my position clear. At least I understand that to be the rule.

THE COURT: It is rather strange to me that you didn't ask this woman what occurred, and then you could put Mr. Marler on later. Now you take her off and put him on in her presence, and then call her attention to the particular thing he said.

MR. JOHNSON: This woman don't even know Mr. Marler, and she wasn't paying any attention to Mr. Marler.

THE COURT: No, but you might have asked her what occurred on that day.

MR. JOHNSON: It was just a matter of saving time.

THE COURT: I don't know that it makes very much difference now.

MR. JOHNSON: Well, of course her attention is directed to it now.

WITNESS: Now do you want me to talk?

MR. JOHNSON: If His Honor will permit you to.

THE COURT: What is it you want from her now?

MR. JOHNSON: I want to find out what occurred there at the time.

THE COURT: I thought she already testified to what occurred. If you want her to testify to it again—

MR. JOHNSON: I would like to have her testify to it again, what happened there.

WITNESS: What happened that day?

MR. JOHNSON: Yes?

THE COURT: What day?

MR. JOHNSON: On the morning—

WITNESS: On the 5th—

MR. McEVERS: I object, on the ground that it is highly leading. Every time they get near the situation counsel—

THE COURT: I think I will have to leave it to the jury now, in the light of the circumstances, to give such weight to it as they think it is entitled to, in view of the manner in which it has been



brought out. What day are you talking about, now, Madam?

A. I am talking about on the 5th of November.

MR. McEVERS: Then I object to it on the ground that it is immaterial.

THE COURT: You may state what occurred on the 5th of November.

A. Well, the coal came, and I went to the door, and there was someone in there, and this woman Babe,—I don't know her other name, and I don't know the other woman's name, but I know she was in this little sitting room, and I spoke to Babe and told her the coal had come, and Mrs. Hazelton wasn't there.

Q. (By MR. JOHNSON) Now was that on Sunday or Monday?

MR. McEVERS: I object to that as leading.

THE COURT: She may answer.

A. It was on Monday.

MR. McEVERS: What day did you say?

A. Monday.

THE COURT: Monday.

MR. JOHNSON: Take the witness.

#### CROSS EXAMINATION.

By MR. McEVERS.

Q. Was that on the 5th, the day that Ruth Hazelton first came back?

A. No. She came on Sunday.

MR. McEVERS: That is all.

MR. JOHNSON: It is stipulated and agreed between counsel for the government and the defense that November 5th was Sunday and November 6th was Monday, as shown by the calendar for the year 1922.

Call Mr. Jake Miller.

JAKE MILLER, produced as a witness on behalf of defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By MR. JOHNSON.

Q. State your name.

A. Jacob Miller.

Q. What is your occupation?

A. Painter and paper hanger and decorator.

Q. Where do you reside, Mr. Miller?

A. Lewiston.

Q. How long have you lived in Lewiston?

A. Twenty-three years.

Q. Are you acquainted with Mrs. Ruth Hazelton?

A. Yes, sir.

Q. Are you acquainted with her place of business?

A. Yes, sir.

Q. Where do you stop in connection with her place of business?

A. I have roomed there since last June.

Q. June of 1922?

A. Yes, sir.

Q. Were you rooming there in October and November of 1922?

A. Yes, sir.

Q. The fore part of November of 1922?

A. Yes, sir.

Q. Were you rooming there at a time when Mrs. Hazelton was away?

A. Yes, sir.

Q. Who was running the place at that time?

A. This Babe Black or Joyce Black, whatever you call her.

Q. Were you in the court room when this Mrs. Jones testified a few moments ago?

A. Yes, sir.

Q. Did you know a woman that occupied room 5?

A. Yes, sir.

Q. Who was she and what was her name?

A. I knew her, her name was Bowler.

Q. How long had she been rooming there, Mr. Miller?

A. Well, I think she had been there probably a week or ten days, something like that; I couldn't say just exactly.

Q. Did you hear the testimony of Mrs. Sadie Samuelson?

A. Yes, sir.

Q. Are you acquainted with her?

A. Yes, sir; to a certain extent.

Q. I didn't hear you.

A. Yes, sir; I have worked for her.

Q. Where did you know her, Mr. Miller?

A. I knew her at the Kendrick rooming house.

Q. Is that the place she referred to as having been purchased by her from Mrs. Hazelton?

A. Yes, sir; that is the same place.

Q. What were you doing there with her?

A. Kalsomining.

Q. These Kendrick rooms?

A. Yes, sir.

Q. When was that that you worked there?

A. That was along in the fore part of November.

Q. How do you fix the time, Mr. Miller?

A. Well, I know because by the way they paid me.

Q. You say "they" paid you. Who do you mean, "they" paid you?

A. Why, this gentleman that was there, Mr.— I don't know what his last name was. They called him "Cookie", that is all I know. He was cook at the Bollinger Hotel.

Q. Well, when was it you were paid?

A. I was to be paid, when I was through I was to have what the material cost, to pay the material bill, which was \$21, and I was to have the balance on the 15th of the month. That was his pay day, he told me, and I told him all right.

THE COURT: Let's not go into these matters.

Q. You heard her testimony in reference to the fact that she had secured some drinks and that at one time you were present when there was liquor sold and furnished to her by Mrs. Hazelton, you and others? Did you hear that testimony?

A. Yes, sir.

Q. Were you ever present at the Central Hotel or any other place in the State of Idaho when Mrs. Hazelton furnished this woman or any of the rest of you with intoxicating liquor, either sold it or gave it to you?

A. No, sir.

Q. Did any such thing as that happen?

A. No, sir; not while I was there.

Q. What kind of appearing woman was this that occupied room 5, what sized woman?

A. Oh, I judge she was a woman that would weigh probably 150 pounds, along in there.

Q. What complexion?

A. She was light complexioned.

Q. Now the morning of the 6th day of November—first I will ask you this question: Do you know the date on which Mrs. Hazelton and her husband returned from the trip east?

A. Yes, sir.

Q. What date was it?

A. It was on Sunday, the 5th day of November.

Q. Directing your attention to the morning of the 6th day of November, state what happened in connection with Mrs. Hazelton?

MR. McEVERS: I object, unless he says that he knows.

Q. (By MR. JOHNSON) I am speaking of your own knowledge.

A. I got up on Monday morning, and as I come out they was setting up a stove there, a colored man was setting up a stove. He had a ladder he couldn't reach up to put the stove pipe in, and I told him, "I will get my ladder and help you," and so I went down and got my ten-foot step ladder and put this stove pipe up. And Mrs. Hazelton was ready to go somewhere, and she said, "I will leave it to you to wire that stove pipe up so that it won't fall down and set the house afire," and so I wired up' the stove pipe.

Q. What time of day was that?

A. That was between nine and ten o'clock.

Q. Do you know how she left?

A. All I know was, she said—

THE COURT: He says that is all he knows.

A. I don't know how she left. I didn't see her.

Q. Do you know when she returned that day?

A. No, I do not, because I wasn't there.

Q. How long was it after the time you fixed the stove that you saw her again?

A. I saw her that evening when I came home.

Q. How long did you stay around the hotel yourself?

A. I was around there all forenoon practically, in the room and out in the—

Q. Did you see Mr. Marler up there any time during the morning?

A. I did not.

MR. JOHNSON: Take the witness.

CROSS EXAMINATION.

By MR. McEVERS.

Q. You live at the Central Hotel?

A. Yes, sir.

Q. You are very friendly to the defendant, are you not?

A. Always been friendly, yes, sir.

Q. She paid a fine for you very recently, didn't she?

MR. JOHNSON: We object as wholly incompetent, irrelevant and immaterial.

THE COURT: Overruled.

Q. (By MR. McEVERS) Isn't it a fact that very recently you were arrested and fined in Lewiston, and she paid half of that for you, \$25?

MR. JOHNSON: An exception.

A. I borrowed the money.

Q. (By MR. McEVERS) Didn't you get the money from Ruth Hazelton?

A. I did not.

Q. How much of your time have you spent in jail the last year?

MR. JOHNSON: We object to this as absolutely incompetent, irrelevant and immaterial.

THE COURT: Sustained.

Q. (By MR. McEVERS) What did you say your business is?

A. Painter and paper hanger and decorator.

Q. Is that all the business that you have?

A. Yes, sir.

MR. McEVERS: That is all.

MR. JOHNSON: That is all, Mr. Miller.

(Witness excused.)

ASA MISHLER, produced as a witness on behalf of defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By MR. JOHNSON.

Q. What is your name?

A. Asa Mishler.

Q. What is your occupation, Mr. Mishler?

A. Farming.

Q. In November of 1922 where were you living?

A. In Pullman.

Q. Pullman?

A. Yes.

Q. You heard the testimony of one William H. Grasty this morning on the witness stand?

A. Yes, sir.

Q. Did you hear his testimony wherein he stated that you had been with him and you or he had purchased two drinks of moonshine whiskey from Mrs. Hazelton in the Central Hotel in November of 1922, did you hear that testimony?



A. I did.

Q. Did any such thing as that happen?

A. Not that I seen.

Q. Did you purchase any liquor from Mrs. Hazelton?

A. No, sir.

Q. Did you ever purchase any liquor from Mrs. Hazelton?

A. No, sir.

Q. Did you ever see Grasty purchase any liquor from Mrs. Hazelton?

A. No, sir.

Q. Did you ever see anyone purchase any liquor from Mrs. Hazelton?

A. No, sir.

Q. Did you ever see her furnish liquor to anyone?

A. No, sir.

MR. JOHNSON: Take the witness.

#### CROSS EXAMINATION.

By MR. McEVERS.

Q. Did you live up there at the Central rooms?

A. I went there for a bed along the latter part of November.

Q. So you were up there about the 20th of November?

A. Somewheres along the last part of November.

Q. And you had a room there about that time, did you?

A. Well, not a room. I went up there along between the 16th and Thanksgiving and got a bed there one night.

Q. Did you stay there?

A. Yes, sir.

Q. You saw Mr. Grasty up there?

A. I don't know as I did.

A. Are you sure you didn't?

A. No, I am not sure that I didn't, because there was quite a few men up there when I registered.

Q. You saw Ruth Hazelton there at the time?

A. Well, yes.

Q. Did you see any intoxicating liquor about the place?

A. No, sir.

Q. You didn't have any there yourself?

A. No, sir.

Q. You didn't have a drink at all while you were up there?

A. No, sir.

Q. What is your business now?

A. I am working for Hickey Brothers.

Q. What doing?

A. Taking care of a bunch of ewes and lambs.

Q. Herding sheep?

A. Tending camp.

Q. How long have you been engaged in that employment?

A. I went down there in March, the last part of March, around the 20th.

Q. What were you doing before that?

A. Before that?

Q. Yes.

A. What time?

Q. Well, before that.

A. Well, I was working on the new dormitory.

Q. Where?

A. At Pullman.

Q. You say you didn't see Mr. Grasty up there at the Central rooms?

A. Not that I know of.

Q. Isn't it a fact that you were with him at the time that Grasty was arrested?

A. Me with Grasty When he was arrested?

Q. When Grasty was arrested.

A. No, sir.

Q. Isn't it a fact that you were arrested with Grasty at the same time and you spent all night in jail?

A. Me?

Q. Yes, you.

A. That's news to me.

MR. McEVERS: That's all.

RE-DIRECT EXAMINATION.

By MR. JOHNSON.

Q. Just answer the question. You haven't answered the question. You said that was news to you. Did that or did it not happen? Were you arrested with Grasty?

A. Why, no, sir.

MR. JOHNSON: That is all.

MR. McEVERS: That is all.

MR. JOHNSON: Call Mr. Hazelton.

(Witness excused.)

E. T. HAZELTON, produced as a witness on behalf of defendant, being first duly sworn, testified as follows:

#### DIRECT EXAMINATION.

By MR. WEST.

Q. State your name, Mr. Hazelton.

A. E. T. Hazelton.

Q. Where do you reside?

A. I have been residing in Lewiston for the last eight months.

Q. Are you the husband of the defendant in this action?

A. I am.

Q. When did you marry?

A. 1917.

Q. Where did you marry?

A. At Missoula, Montana.

Q. How long have you been a resident of Lewiston?

A. Well, it hasn't really been a resident. I have been there off and on for the last year.

Q. After you married Mrs. Hazelton have you had occasion to go to war?

A. I did.

THE COURT: Why go into that?

MR. WEST: Well, I wanted to get his absence from home, is all.

MR. McEVERS: It doesn't even appear yet that he was there at the time these facts—

THE COURT: Let's get on, gentlemen. It seems to me we are taking a great deal of time with immaterial matters here. If he knows anything about this case let us get at the facts.

Q. What time, Mr. Hazelton, did you leave for the east?

A. The 6th or 7th of October, 1922.

Q. And who went with you?

A. My wife, Mrs. Hazelton.

Q. And what time did you return?

A. On the afternoon of the 5th of November, 1922.

Q. Now you were there on the 6th of November, the date that the defendant is accused of selling a bottle of whiskey?

A. The morning of the 6th, yes, sir.

Q. State to the jury what time you and Mrs. Hazelton left, if you did at all, to go to some other place.

A. Well, on the afternoon of the 5th we got in about, I imagine—

THE COURT: Can't you answer the question, sir? What time in the morning did you leave, if you left at all?

A. Between nine and ten o'clock.

Q. Where did you go?

A. We started for Colton, Washington.

Q. And who were with you?

A. Mrs. Hazelton.

Q. You and her alone?

A. Yes, sir.

Q. How did you go?

A. In my car.

Q. And where did you go to?

A. We started for Colton, but we only got about two-thirds up the hill, the spiral highway.

Q. What was the reason you didn't go to Colton?

MR. McEVERS: Objected to as immaterial.

THE COURT: Overruled. Did you have a break down or what?

A. Yes, sir.

Q. State to the jury how your accident happened there, briefly.

THE COURT: No, you needn't even state it briefly.

Q. How long were you detained there?

A. About two and a half or three hours, somewhere around there, possibly four hours altogether.

Q. And then where did you go?

A. I got back into, coasted back down the hill into Lewiston, or to the foot of the hill, rather, not into Lewiston.

Q. Did you finally get to Lewiston?

A. Finally, yes, sir.

Q. And what time was it?

A. I imagine about between probably two and three; I can't tell exactly; it was in the afternoon.

Q. Who took you to Lewiston, if anyone?

A. A garage man, Small & Kennedy's garage; he was an employe.

Q. Your car wouldn't run at the time?

A. No, sir; I put it out of commission on the hill.

Q. During this day, October 6th, or November 6th, rather, did you see Mr. Marler up at the Central Rooms before you left on your trip?

A. On the 6th?

Q. Yes.

A. No, sir, I did not.

Q. You were there all the time until you left for Pullman?

A. We left about nine, between nine and ten. Yes, I was there up until the time we left for Colton.

Q. I mean Colton.

A. Yes, sir.

Q. And was your wife there, if you know?

A. Yes, sir.

Q. Was there a lady, if you remember, stopping at your hotel at that time, in room 5?

A. Well, I never saw the lady myself. I couldn't say that she was there.

Q. Stopping at the hotel prior to this date?

A. She had been there, yes.

Q. Were you away during a short period before the 6th of October?

A. Of October?

Q. I mean the 6th of November.

A. I was away about thirty days, yes, sir.

Q. She had been there then at the hotel during the time that this lady was supposed to have taken charge of the hotel?

THE COURT: What was that, Mr. West?

MR. WEST: I say this lady that had charge of room 5, or was in room 5.

THE COURT: He says he never saw her; he was away.

MR. WEST: I understood him to say he knew she was there.

THE COURT: No, he didn't say he knew she was there. I understood you to say you never saw this lady?

A. I never saw this lady, no, sir.

THE COURT: Very well.

MR. WEST: That is all.

#### CROSS EXAMINATION.

By MR. McEVERS.

Q. You say that you were in the hotel constant-



ly on the morning of the 6th until you left at nine A. M.?

A. Well, I slept there, and I got up rather early, and I went to the garage and got my car, and come back to the hotel, and I got the wife and we started for Colton.

Q. You weren't there constantly then?

A. Not constantly, no, sir.

MR. McEVERS: That is all.

MR. WEST: That is all.

MR. JOHNSON: Call Mrs. Hazelton.

(Witness excused.)

RUTH HAZELTON, produced as a witness on behalf of defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By MR. JOHNSON.

Q. State your name.

A. Mrs. Ruth Hazelton.

Q. You are the defendant in this action?

A. Yes, sir.

Q. You are the proprietor of the Central rooming house or lodging house or hotel?

A. Yes, sir.

Q. How long have you been running that Central Hotel, Mrs. Hazelton?

A. For the past two and a half years.

Q. Directing your attention to the latter part of September, the fore part of October, and up to the

6th day of—or the 5th day of November, had you and your husband been away from Lewiston for a while?

A. We took a trip to Chicago.

Q. When you were away who did you leave in charge of your place of business?

A. Joyce Black.

Q. What instructions did you give, if any, to Joyce Black with reference to handling of intoxicating liquors or permitting it to be around or about the Central Hotel?

MR. McEVERS: Objected to as self-serving and immaterial.

THE COURT: Sustained.

Q. Well, in any event you returned home on the—what time on the 5th, what time did you arrive in Lewiston?

A. In the middle part of the afternoon.

Q. Had you made this trip in a car?

A. Yes, sir.

Q. At the time you were away was Joyce Black an employe of yours, or was she running the place on her own account?

A. She was just taking care of it. I told her to take good care of it.

Q. What arrangements did you have for the pay?

A. She was to pay all the bills, and what was over she was to have for her salary.

Q. Directing your attention to the morning of

the 6th of November, did you leave on the morning of the 6th?

A. Yes, sir.

Q. What time did you leave?

A. Past nine o'clock, between nine and ten.

Q. About what time did you return to Lewiston?

A. It was past two o'clock in the afternoon.

Q. On the morning of the 6th day of November did you see Mr. Marler, a government prohibition—

A. No, sir.

Q. —Inspector, is that what you call it?

MR. McEVERS: Agent.

MR. JOHNSON: Agent?

A. No, sir.

Q. I show you Plaintiff's Exhibit No. 1 in evidence, and ask you whether or not on the morning of the 6th day of November you sold or had anything to do with the sale or delivery—

A. No, sir.

Q. Wait a minute. --of this bottle, to Mr. Marler, or to anyone else?

A. No, sir.

Q. Did you see Mr. Marler at all on the morning of the 6th day of November?

A. No, sir.

Q. What was the first time that you ever saw Mr. Marler to know him?

A. In Mr. O'Neil's office, I didn't know the man, and I asked the—

THE COURT: No, don't state what you asked. You didn't know him until you saw him in Mr. O'Neil's office?

A. I didn't know him.

Q. You heard some testimony by the maid in reference to a woman that was at the hotel there besides Joyce Black. Do you know what her name was?

A. I think she registered by the name of Brown, but I knew her by the name of Ruby. That is what the other lady called her, Ruby.

Q. How long did she and Miss—Is it Miss Black, or Mrs. Black, or is it just Babe or Joyce?

A. I couldn't say.

Q. In any event, referring to her, how long did she stay there at the hotel after you returned from Chicago?

A. Just a few days.

Q. You heard the testimony of Mrs. Samuelson this morning, in which she says that on two or three different occasions you sold her and other men, or men, while she was present, some liquor, moonshine whiskey.

A. Yes, sir.

Q. Did you ever sell her any such thing?

A. No, sir.

Q. Or any of the rest of them?

A. No, sir.

Q. Did any such thing as that occur?

A. No, sir.

Q. Did you ever sell any moonshine whiskey or other intoxicants to any person?

A. No, sir; I don't approve of it.

Q. Did you hear the testimony of Mr. Grasty in reference to the fact that he claimed that he bought some drinks of you?

A. Yes, sir.

Q. On one occasion by himself and on another occasion with Asa Mishler. Did any such thing as that occur?

A. No, sir.

Q. Did you ever sell William H. Grasty or Asa Mishler or either one or both—

A. No, sir.

Q. —any intoxicating liquors?

A. No, sir.

Q. Did you ever give them any intoxicating liquors?

A. No, sir. I don't have it in the house.

Q. I will ask you if about a week ago, in the City of Lewiston, Mrs. Sadie Samuelson stated to you in word and substance to the effect that if you didn't return to her the amount of money she had paid on the Kendrick rooms that she would make it hot for you, or word in substance to that effect?

A. Yes, sir, on the telephone she stated that.

Q. Had she been demanding of you the return of money for the Kendrick rooms?

A. Yes, sir.

Q. And just state what occurred between you

and her after you sold this.

MR. McEVERS: Objected to.

THE COURT: No. You need not go into that.

Objection sustained.

Q. (By MR. JOHNSON) Did she evidence a good deal of ill-feeling towards you?

A. Yes, sir.

MR. McEVERS: Objected to as immaterial.

THE COURT: Sustained.

Q. (By MR. JOHNSON) By the way, just one or two more questions, Mrs. Hazelton. Of whom does your family consist besides your husband?

A. My son and my husband.

Q. Where does your son live?

A. Colton.

Q. Was your son living in Colton at the time you returned from Chicago?

A. Yes, sir.

Q. Does he go to school there?

A. Yes, sir.

Q. I guess I asked you. He wasn't with you when you went to Chicago?

A. No, sir.

Q. I show you this document and ask you to state now just generally what it is.

A. It is the register from the hotel.

Q. Central Hotel?

A. Yes, sir.

Q. I direct your attention here to date of October 22, 23 and 24 and 25, particularly this entry

here. I direct your attention particularly to that.

A. Yes.

MR. McEVERS: I object to it on the ground that it is immaterial. There has been no sufficient yet to show what this person's name was that purported to have registered in that room.

MR. JOHNSON: Well, I haven't offered that yet, but I was going to ask some more questions.

MR. McEVERS: All right.

Q. (By MR. JOHNSON) You referred to a woman who was occupying room 5 in the hotel. Did you examine the hotel register afterwards to see who she was and what her name was?

A. Yes, sir, I did that the day I came home.

Q. I direct your attention then to this register of the Central Hotel, and ask you if that is the woman that you referred to as occupying room 5 on the 6th of November?

A. This is Mrs. Brown. They had a concession during the fair and they was here.

MR. McEVERS: I object to its introduction on the ground that it is only a part of the register. If they were going to introduce the register of that hotel we should have it all here, and we could see whether or not anyone else had taken that room subsequently. Furthermore, there is not sufficient proof to show that it was Mrs. Brown, she testifying here that she didn't know the name a few moments ago, said her name was Ruby.

WITNESS: She had two or three different names.

THE COURT: Just a moment. The objection is sustained.

MR. JOHNSON: That is all for the present.

CROSS EXAMINATION.

By MR. McEVERS.

Q. How long have you operated the Central rooming house?

A. Two years and a half past.

Q. How many rooms have you there?

A. Thirty-two.

Q. Approximately how many roomers do you have a night?

A. Fill them up every night.

Q. How much do you charge a room?

A. Fifty, seventy-five and a dollar.

Q. When did you first get acquainted with this girl you refer to as Babe Black.

A. She came to my house as a roomer.

Q. When?

A. About a month before.

Q. About a month before when?

A. I know her about four weeks before I went away.

Q. What was she doing at the time she was there before you went away?

A. I couldn't say.

Q. All you knew was that she went by the name of Babe?



A. Yes. She was sickly; she had an operation.

Q. You didn't know of any other name she had?

A. Joyce Black, I said.

Q. You don't know whether she was a Miss or Mrs.?

A. No, sir.

Q. You don't know where she came from?

A. No.

Q. You don't know where she went afterwards?

A. No, sir.

Q. How much revenue did you ordinarily make from that rooming house a day? You had about 30 rooms, you say?

A. Yes, sir.

Q. And they were full every night?

A. Yes, sir.

Q. And they rented from fifty cents to a dollar apiece?

A. Yes, sir.

Q. So you took in around twenty-five or thirty dollars a day?

A. Sometimes twenty, sometimes fifteen, and sometimes ten.

Q. You owned the furniture in that place?

A. Yes, sir.

Q. How much was that worth?

A. I don't know. If you went to buy it, what it would be worth.

Q. You had the furniture and rooming house of 30 rooms?

A. Yes, sir.

Q. Yet you just turned that whole thing over to a woman you never knew, and went away, did you?

A. She just came out of the hospital and I thought she would be a competent woman.

Q. You didn't even know who the woman was?

A. I had confidence in her.

Q. You didn't employ her on a salary?

A. No, sir.

Q. You just told her to take the business and take the profits?

A. Pay the expenses and keep the profits, what there was.

Q. And it run around \$25 a day?

A. Sometimes ten and fifteen.

Q. She was in charge there for a period of a couple of weeks, was she?

A. About a month.

Q. And then you came back on the 5th of November?

A. Yes, sir.

Q. Now this other woman that you say was in room 5, you just knew her by the name of Ruby?

A. Mrs. Brown, but Ruby was her first name.

Q. Didn't you testify on direct examination that all you knew was her name was Ruby?

A. I couldn't say her name because I didn't know for sure what her name was, only by Brown on the register. I didn't know whether it was her real name.

Q. Was she there when she went away?

A. The first time?

Q. Yes?

A. No, sir

Q. She was there when you came back?

A. Yes, sir.

Q. How long did she stay after you came back?

A. Just a few days, two days.

Q. What was her business, if you know?

A. Her husband and her traveled with the carnival.

Q. You say that you have never sold any intoxicating liquor up there?

A. No. sir.

Q. Never had any in your possession there?

A. No. sir.

Q. Isn't it a fact that you had several bottles of beer in your possession there in June when the officers came and searched your place?

A. I never even saw it. I was confined in a wheel chair, and practically was in my bed the day they came. I had an operation.

Q. You saw them come and get it, didn't you?

A. They said they were going to take it.

Q. And they did, didn't they?

A. Yes, sir.

Q. And you went down subsequently to that and pleaded guilty to the offense of running a disorderly house?

MR. JOHNSON: I object. The Court struck

that out.

THE COURT: Overruled.

Q. You went down and pleaded guilty to running a disorderly house?

A. I had eight stitches in each foot, and couldn't stand—

THE COURT: Just answer the question.

Q. (By MR. McEVERS) Isn't that true?

A. Yes, sir; I did.

Q. I will ask you whether or not at the time of the preliminary hearing when you were arrested on this particular offense, if you didn't tell Agent Marler that you had that beer there and that you had it for medicinal purposes?

A. No, sir. I had no conversation with that man in my life.

Q. Not even at the time of the preliminary?

A. I just asked him if he couldn't have been mistaken, or if his conscience didn't hurt him, to take me up there, and he said no, and that is all I asked the man.

Q. And you didn't make the statement that you had that beer there for medicinal purposes?

A. No, sir, because I didn't know what it was.

Q. And you say you don't approve of drinking liquor?

A. No, sir; I am not a drinking woman myself.

Q. And you don't approve of anyone else doing it?

A. No, sir.

Q. What does your husband do?

A. Well, he is a mechanic. He is a jack of all trades, I should judge; he can do anything.

MR. McEVERS: That is all.

RE-DIRECT EXAMINATION.

By MR. JOHNSON.

Q. You were asked with reference to some so-called proposition of beer. Just state to the jury what you know about that matter anyway, that was testified to, with reference to.

THE COURT: That is too general.

Q. Just state now—

THE COURT: She stated she didn't know it was there.

A. I pleaded to something I didn't even know I was pleading to. I pleaded to get out of there, as I never was arrested in my life before.

MR. JOHNSON: That is all.

MR. McEVERS: That is all.

MR. JOHNSON: I would like to recall Mr. Hazelton just for one thing, and I think that will close our case.

(Witness excused.)

E. T. HAZELTON, heretofore duly sworn on behalf of defendant, upon being recalled, testified as follows:

DIRECT EXAMINATION.

By MR. JOHNSON.

Q. Mr. Hazelton, I show you this document, and ask you whether or not that is the memorandum of bill furnished you by the garage the morning you had, you started to Colton?

A. It is.

MR. McEVERS: I object to it on the ground that it is immaterial.

MR. JOHNSON: We now offer in evidence this document.

MR. McEVERS: It is hardly material that they were away from nine to two anyway, if the Court please.

THE COURT: Oh, it may go in.

Said paper was marked—

DEFENDANT'S EXHIBIT NO. 2.

MR. JOHNSON: Eleven six. Owner's name, Hazelton. Description of work. Welding oil groove in oil pump. Two hours and thirty minutes. Then material, twenty-five cents, three-fifteen, and three-forty. Mechanic's name, C. Nelson.

MR. JOHNSON: That is all.

CROSS EXAMINATION.

By MR. McEVERS.

Q. What is your business?

A. I have been a machinist a few years.

Q. What is your present employment?

A. I am doing some building at present.

Q. Where?

A. Weippe, Idaho.

Q. For whom?

A. Myself.

Q. What did you do before that?

A. I have property in Yakima.

Q. Have you lived in Yakima recently?

A. Yes, sir.

Q. How long since you lived there?

A. About nine months or ten.

Q. Did you live there while your wife was in Lewiston?

A. Yes, sir.

Q. How much property did you have over there?

A. Ten acres.

Q. What kind of land is it?

A. Fair.

Q. Tillable farm land?

A. Yes.

Q. Out in the country?

A. Yes, sir.

Q. Did you rent it?

A. Yes, sir.

Q. Is that all the property you have?

A. Yes, sir.

Q. How long since—Have you ever been employed?

A. Not for the last few years I haven't. I have been working for myself.

Q. Who are you working for at the present time?

A. Myself.

Q. Do you own property?

A. Yes, sir.

Q. At Weippe?

A. Yes, sir.

Q. What kind of property?

A. Building property, city property.

Q. And your wife lives in Lewiston?

A. Yes, sir.

MR. McEVERS: That is all.

RE-DIRECT EXAMINATION.

My MR. JOHNSON.

Q. Were you in business in Yakima prior to this time?

A. Yes, sir.

Q. What business were you in there?

A. I had a chicken dinner resort.

Q. How long were you in business in Yakima, Mr. Hazelton?

A. About two years.

Q. You conducted your own business?

A. I did.

Q. You have no interest in the Central Hotel? That is your wife's property?

A. I have not; no, sir.

MR. JOHNSON: That is all.

RE-CROSS EXAMINATION.

By MR. McEVERS.

Q. What sort of business is this chicken dinner resort?

A. Just like any other. Go out and order your



chicken dinner, and you will get it.

Q. Where do you go to get it?

A. To me.

Q. Where did you operate?

A. In Yakima.

Q. Right in town?

A. A mile and a half out.

Q. Any party going out from Yakima would go out to your place and order a chicken dinner?

A. Exactly.

Q. That is all you did, had chicken dinners?

A. And dance.

Q. A kind of a road house?

A. You may call it that if you wish, yes.

MR. McEVERS: That is all.

MR. JOHNSON: The defense rests.

MR. McEVERS: We will call Mr. Marler.

(Witness excused.)

FRANK M. MARLER, a witness heretofore duly sworn on behalf of plaintiff, upon being recalled in rebuttal, testified as follows:

DIRECT EXAMINATION.

By MR. McEVERS.

Q. I will ask you, Mr. Marler, whether or not you had a conversation with the defendant, Ruth Hazelton, at the time of the preliminary hearing, in which she told you that she had that beer in her possession in June for medicinal purposes.

A. I did, yes.

Q. Was that the substance of the conversation?

A. Yes, sir.

Q. I will ask you whether or not you had a conversation with Ruth Hazelton at the time you made the purchase, whether or not you did.

MR. JOHNSON: That is objected to as absolutely part of their case in chief, and having already been testified to by the witness.

MR. McEVERS: For the purpose of identification. They have denied identity.

THE COURT: I think I will let him answer.

A. Just a slight conversation?

Q. What was it?

A. Why, just a general conversation. I don't remember exactly. I think I asked her where she was from or something, and mentioned the fact that I had never seen her there before, or words to that effect, and talked to her a little while, and then I talked to Miss Black.

Q. What did Ruth Hazelton say?

A. She told me she had just returned from a vacation, I remember, and was just going to take the place over, back again.

Q. Are you sure it was Ruth Hazelton you were talking to?

A. I am certain of it.

MR. McEVERS: That is all.

The Government rests.

THE COURT: The argument will be limited to twenty-five minutes a side.

(The case was thereupon argued to the jury by counsel.)

THE COURT: Gentlemen, my instructions to you will be very brief. These three charges upon which the defendant is being tried are all based upon different provisions of the National Prohibition Act. There is the possession of intoxicating liquor. I need not explain that charge to you. It has been explained by counsel for both sides, and there is no difference of opinion as to the meaning of the law. And so with the second count, which involves the charge of selling. The law is very simple, and you doubtless understand it now as well as I could explain it to you.

Just a word with regard to the third count, which is the charge of a nuisance. The statute provides that it shall be unlawful for any person to maintain a house or other place where intoxicating liquor is unlawfully kept or sold or manufactured. In other words, to keep a place where intoxicating liquor is manufactured or sold or kept constitutes a nuisance. Now it isn't necessary, of course, to show a great many different specific acts of sale or keeping of liquor or of manufacture. Sometimes it is possible to infer that liquor is being habitually sold at a place merely from one transaction. It would depend upon the surrounding circumstances of that transaction. As, for instance, if you were to go down here into a hardware store and buy a single article of hardware, from your

ability to make that one purchase and what you saw there and the general circumstances you might reasonably conclude that someone was engaged in the hardware business there. So one might buy liquor at a place under such circumstances that the single sale would be to the ordinary man conclusive proof that the person who was maintaining the house or place was maintaining a nuisance, that is, was maintaining a place where liquor was being more or less habitually sold and kept in violation of the law. I say that much to you in order that you may understand that it is not necessary in all cases to prove a series of acts. It is a question whether the specific acts which are proven in the case, together with the reasonable inferences therefrom, convince you that liquor was more or less continually kept in this place and sold there, and with the knowledge and consent or under the direction of the defendant who is on trial. That is the issue touching that particular count of the information.

Now the form of verdict which will be handed to you to be used in this case will require that you find separately upon each one of these three counts or charges, that is, you will find the defendant guilty or not guilty of the charge of possession, guilty or not guilty upon the charge of sale, and guilty or not guilty upon the charge of maintaining a nuisance.

As you have been repeatedly advised, she is pre-

sumed to be innocent of each one of these charges, and the burden was upon the Government to establish her guilt by evidence which is sufficient to convince you beyond a reasonable doubt. Generally in that respect I have this to say to you. If after you have fairly considered all of the evidence in the case, judging of it in the light of your own experience in dealing with people and in human affairs, and in the light of all the circumstances so far as they appear in evidence, if you can candidly say to yourself that you have an abiding conviction of the truth of the charge, that is, of the guilt of the defendant, then you should find her guilty, that is, I mean such a conviction as you gentlemen would be willing to act upon in the most important affairs of your own lives. Now if, upon the other hand, after such consideration of all of the evidence, you cannot conscientiously say that you have that abiding conviction of the truth of the charge, then you have a reasonable doubt, and you should acquit.

It is necessary that all of you concur in finding a verdict.

Let an officer be sworn, Mr. Clerk.

(Bailiff sworn.)

THE COURT: You may retire in charge of the officer.

(The jury thereupon retired from the court room in charge of the bailiff.)

*In the District Court of the United States for the  
District of Idaho, Central Division.*

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May term, 1923.

UNITED STATES OF AMERICA,

vs.

RUTH HAZELTON,

*Defendant.*

No. 1816.

VERICT.

We, the jury in the above entitled cause, find the defendant Not Guilty on the first count, Not Guilty on the second count, and Guilty on the third count, as charged in the information.

CALVIN BOYER,

*Foreman.*

(Endorsed) U. S. District Court, District of Idaho.

Filed May 22, 1923,

W. W. McREYNOLDS, Clerk.

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#### ASSIGNMENT OF ERRORS.

The defendant Ruth Razelton in this case, in connection with the petition for writ of error, makes the following assignment of errors which she avers occurred upon the trial of said cause, namely:

1.

The Court erred in sustaining the objection to the following questions asked of the witness W. H. Grasty:

“By MR. JOHNSON: Q. You never state to them that you had bought any liquor or that she had given you any liquor or that you were present when any liquor was sold.”

2.

The Court erred in permitting Eugene Gasser to testify as to the records of the police court in connection with an alleged arrest of the defendant Ruth Hazelton.

3.

The Court erred in overruling the objection to the question propounded by Mr. McEvers on cross-examination of the witness Jake Miller, to-wit:

“Q. She paid a fine for you recently, didn't she?”

and the following question to the same witness:

“Q. Isn't it a fact that very recently you were arrested and fined in Lewiston and she paid half of that for you, twenty-five dollars?”

4.

The Court erred in sustaining the objection to the question asked of the defendant Ruth Hazelton on direct examination:

“Q. What instruction did you give, if any, to Joyce Black with reference to the handling of intoxicating liquors or permitting it to be around or about the Central Hotel?”

5.

The Court erred in overruling the objection to a question on cross-examination of Ruth Hazelton:

“Q. And you went down subsequent to that and pleaded guilty to the offence of running a disorderly house.”

## 6.

The Court erred in permitting any evidence in reference to the defendant Ruth Hazelton having been arrested by the police of the city of Lewiston and in reference to any alleged beer.

Wherefore, the defendant respectfully asks the Court to allow and settle the foregoing Bill of Exceptions and make the same a record in this cause.

MILES S. JOHNSON,  
T. B. WEST,  
*Attorneys for Defendant.*

ORDER SETTLING AND ALLOWING BILL  
OF EXCEPTIONS.

The said bill of exceptions having been duly presented to the court is now in the presence of the United States Attorney and counsel for the defendant settled and allowed, and made a record in said cause. Dated this 26th day of May, 1923.

FRANK S. DIETRICH,  
*District Judge.*

Service by copy duly admitted of the foregoing bill of exceptions this 26th day of May, 1923.

JOHN H. McEVERS,  
*Asst. United States Attorney.*

Endorsed,

Filed May 26, 1923,

W. D. McREYNOLDS, Clerk.



(Title of Court and Cause.)

No. 1816.

PETITION FOR WRIT OF ERROR.

Your petitioner, Ruth Hazelton, the above named defendant, brings this her petition for a writ of error to the District Court of the United States for the District of Idaho, and thereupon shows that on the 22nd day of May, 1923, there was rendered and entered in the above entitled court a judgment against your petitioner whereby she was adjudged and sentenced to imprisonment in the County Jail of Nez Perce County, State of Idaho, for the following term, to-wit: For the term of sixty days and a fine of Five Hundred Dollars; in which judgment as aforesaid and the proceedings had prior thereto in this cause certain errors were committed to the prejudice of this defendant, all of which will more in detail appear from the assignment of errors.

Whereupon this defendant prays that a writ of error may issue in her behalf to the United States Circuit Court of Appeals for the Ninth Circuit, for the correction of errors so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the said Circuit Court of Appeals.

MILES S. JOHNSON,

T. B. WEST,

*Attorneys for Defendant.*

Residing at Lewiston, Idaho.

Service acknowledged.

Endorsed,

Filed May 26, 1923,

W. D. McREYNOLDS, Clerk.

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(Title of Court and Cause.)

No. 1816.

ORDER ALLOWING WRIT OF ERROR.

Now at this time comes the defendant and presents to the Court her petition for the allowance of a writ of error from the United States Circuit Court of Appeals for the Ninth Circuit to the above entitled Court, and has presented her bond for appearance in the sum of One Thousand Dollars, that being the amount of bail heretofore fixed by this Court.

Whereupon, it was ordered that said bond be accepted and approved, the prayer of said petitioner be granted, and that the Clerk of this Court be and he is hereby directed to issue the writ of error prayed for in this petition, and that sentence and execution in said cause be stayed until the final disposition of said writ in said United States Circuit Court of Appeals for the Ninth Circuit.

Dated this 26th day of May, 1923.

FRANK S. DIETRICH,  
*District Judge.*

Endorsed,

Filed May 26, 1923.

W. D. McREYNOLDS, Clerk.

(Title of Court and Cause.)

Approved May 26, 1923,

Dietrich, Judge.

SUPERSEDEAS BOND.

KNOW ALL MEN BY THESE PRESENTS:

That we, Ruth Hazelton, as Principal, and the Hartford Accident and Indemnity Company, a corporation of the State of Connecticut, whose principal place of business is at Hartford, Connecticut, as Surety, are held and firmly bound unto the United States of America in the full and just sum of One Thousand Dollars (\$1000.00), to be paid to the United States of America, to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators and successors or assigns, jointly and severally by these presents.

Sealed with our seals and dated this 25th day of May, 1923.

WHEREAS, lately at the May Term, A. D., 1923. of the District Court of the United States for the District of Idaho, Central Division thereof, in the suit pending in said Court between the United States of America and Ruth Hazelton, a judgment and sentence was rendered against the said Ruth Hazelton, and the said Ruth Hazelton has obtained a writ of error from the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment and sentence in the aforesaid suit:

NOW, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that if the said Ruth

Hazelton shall appear either in person or by attorney in the United States Circuit Court of Appeals for the Ninth Circuit on such day or days as may be appointed for the hearing of said cause in said Court, and prosecute her writ of error and shall abide by and obey all orders made by the United States Circuit Court of Appeals for the Ninth Circuit in said cause and shall surrender herself in the execution of the judgment and sentence appealed from and pay any fine that has been or may be imposed upon her, as said Court may direct, if the judgment and sentence against her shall be affirmed, and if she shall appear for trial in the District Court of the United States for the District of Idaho on such day or day as may be appointed for a retrial by said District Court and abide by the judgment and sentence against her in case said judgment shall be reversed by the United States Circuit Court of Appeals, for the Ninth Circuit, then the above obligation to be void, otherwise to remain in full force, virtue and effect.

MRS. RUTH HAZELTON, (SEAL)

HARTFORD ACCIDENT & INDEMNITY

COMPANY,

By M. L. Tyler,

*Its Attorney-in-Fact.*

(Corporate Seal)

State of Idaho, )  
 ) ss.  
 County of Nez Perce,)

I, M. L. Tyler, being first duly sworn, on oath

depose and say, that I am the attorney-in-fact and the duly authorized agent of the Hartford Accident & Indemnity Company of Connecticut, the surety on the foregoing undertaking attached hereto; that the said Hartford Accident & Indemnity Company has complied with all of the requirements of law to execute surety bonds in the State of Idaho; that this affiant has executed the said bond for said Surety company as such attorney-in-fact, and that his authority is duly recorded in Nez Perce County, State of Idaho.

M. L. TYLER.

Subscribed and sworn to before me this 25th day of May, 1923.

(SEAL)

GENO GIBSON,

*Notary Public for State of Idaho.*

Residing at Lewiston, Nez Perce County therein.

My commission expires, Mar. 3, 1924.

Endorsed,

Filed May 26, 1923,

W. D. McREYNOLDS, Clerk.

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(Title of Court and Cause.)

No. 1816

PRAECIPE.

*To the Clerk of the United States District Court  
for the Above Named Division and District:*

You are hereby requested to make the record in

the above styled and numbered cause to consist of the following parts of said record, for transmission to the United States Circuit Court of Appeals for the Ninth Circuit, to-wit:

1. Information.
2. Bill of Exceptions, including Reporter's Transcript of Trial.
3. Assignment of Errors.
4. Petition for Writ of Error.
5. Order allowing Writ of Error.
6. Supersedeas Bond.
7. Writ of Error.
8. Citation on Writ of Error.
9. This praecipe.

Respectfully,

MILES S. JOHNSON,  
T. B. WEST,  
*Attorneys for Defendant,*  
Residence and P. O. Ad-  
dress, Lewiston, Idaho.

Service acknowledged.

Endorsed, Filed May 31, 1923.

W. D. McREYNOLDS, Clerk.

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(Title of Court and Cause.)

No. 1816.

WRIT OF ERROR.

THE UNITED STATES OF AMERICA—ss.

The President of the United States of America, to

the Judges of the District Court of the United States for the District of Idaho—GREETING.

Because in the records and proceedings as also in the rendition of the judgment of a plea which is in the District Court before Honorable Frank S. Dietrich, one of you, between the United States of America, Plaintiff, and Defendant in Error, and Ruth Hazelton, Defendant, and Plaintiff in Error, a manifest error hath happened to the great damage of the said Plaintiff in Error, as by complaint doth appear, and we being willing that error, if any hath happened, should be duly corrected and full and speedy justice done to the parties aforesaid, in this behalf we do command you if judgment be therein given that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you may have the same at San Francisco, California, within thirty days from the date hereof in the said Circuit Court of Appeals, to be therein and there held; that the record and proceedings aforesaid be then and there inspected, that the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States of America should be done.

WITNESS the Honorable William Howard Taft,

Chief Justice of the Supreme Court of the United States, this May 25th, 1923.

FRANK S. DIETRICH,

*Judge.*

(SEAL)

W. D. McREYNOLDS,

*Clerk of the District Court  
of the United States for  
District of Idaho.*

Service of the within Writ of Error made this day upon the District Court of the United States for the District of Idaho by filing with me as Clerk of said Court a duly certified copy of said Writ of Error May 26, 1923.

(SEAL)

W. D. McREYNOLDS,

*Clerk of the United States  
District Court, District of  
Idaho.*

Endorsed, Filed May 26, 1923,

W. D. McREYNOLDS, Clerk.

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(Title of Court and Cause.)

No. 1816.

CITATION ON WRIT OF ERROR.

UNITED STATES OF AMERICA, )

) ss.

District of Idaho, )

To the United States of America—GREETING:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco,



California, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the District Court of the United States for the District of Idaho, wherein Ruth Hazelton is Plaintiff in Error and you are Defendant in Error, to show cause, if any there be, why the judgment in said Writ of Error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand at Moscow, Idaho, in said District this 26th day of May, 1923.

FRANK S. DIETRICH,

(SEAL)

*Judge.*

Attest:

W. D. McREYNOLDS,

*Clerk*

Due and legal service of the attached and foregoing citation is hereby accepted and admitted at Moscow, Idaho, this 26th day of May, 1923.

JOHN H. McEVERS,

*Asst. United States Attorney for the District of Idaho.*

Endorsed, Filed May 26, 1923,

W. D. McREYNOLDS, Clerk.

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(Title of Court and Cause.)

No. 1816.

CLERK'S CERTIFICATE.

I. W. D. McReynolds, Clerk of the District Court

of the United States for the District of Idaho, do hereby certify the foregoing transcript of pages numbered from 1 to 122, inclusive, to be full, true and correct copies of the pleadings and proceedings in the above entitled cause, and that the same together constitute the transcript of the record herein upon Writ of Error to the United States Circuit Court of Appeals for the Ninth Circuit, as requested by the praecipe filed herein.

I further certify that the cost of the record herein amounts to the sum of \$141.35, and that the same has been paid by the Plaintiff in Error.

Witness my hand and the seal of said Court this 9th day of July, 1923.

W. D. McREYNOLDS,

(SEAL)

*Clerk.*

In the District Court of the United States for the  
District of Idaho, Central Division.

May term, A. D. 1923. Present, Hon. FRANK S.  
DIETRICH, Judge.

No. 1816.

THE UNITED STATES

against

RUTH HAZELTON,

Defendant.

Convicted of Violation of National Prohibition  
Act.

**Judgment.**

NOW, on this 22d day of May, 1923, the United States District Attorney, with the defendant and her counsel, Messrs. Miles S. Johnson and T. B. West, came into court; the defendant was duly informed by the Court of the nature of the information filed against her for the crime of Violation of National Prohibition Act committed on the 6th day of November, A. D. 1922, of her arraignment and plea of not guilty, of her trial and the verdict of the jury on the 22d day of May, A. D. 1923, "Guilty as charged in the information." The defendant was then asked by the Court if she had any legal cause to show why judgment should not be pronounced against her, to which she replied that she had none, and no sufficient cause being shown or appearing to the Court,

"Now, therefore, the said defendant having been convicted of the crime of Violation of National Pro-

hibition Act, it is hereby considered and adjudged that the said defendant Ruth Hazelton do pay a fine of Five Hundred (\$500.00) Dollars, and that she be imprisoned and kept in the Nez Perce County Jail for a term of sixty days. Upon giving a \$1000.00 bond, defendant was granted stay of execution until May 26th, 1923.”

United States of America,  
District of Idaho,—ss.

I, W. D. McReynolds, Clerk of the United States District Court for the District of Idaho, do hereby certify that the foregoing copy of judgment in cause No. 1816, United States vs. Ruth Hazelton, has been by me compared with the original, and that it is a correct transcript therefrom and of the whole of such original, as the same appears of record and on file at my office and in my custody.

In testimony whereof, I have set my hand and affixed the seal of said Court in said District this 17th day of July, 1923.

[Seal]

W. D. McREYNOLDS,

Clerk.

By \_\_\_\_\_,

Deputy.

[Endorsed]: No. 4056. United States Circuit Court of Appeals for the Ninth Circuit. Ruth Hazelton, Plaintiff in Error, vs. United States of America, Defendant in Error. Certified Copy of Judgment of U. S. District Court. Filed Jul. 20, 1923. F. D. Monekton, Clerk. By Paul P. O'Brien, Deputy Clerk.